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ISSUES RELATED TO COMPETITION LAW OF PARTICULAR RELEVANCE TO DEVELOPMENT

PREPARATIONS FOR A HANDBOOK ON COMPETITION LEGISLATION

Handbook on Competition Legislation

Note by the UNCTAD secretariat

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INTRODUCTION

1. The Set of Multilateral Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices provides in section F.6 (c) for the compilation of a Handbook on Restrictive Business Practices Legislation.

2. Furthermore, the Fourth Conference to Review All Aspects of the Set, held in Geneva from 25 to 29 September 2000, requested the UNCTAD secretariat to continue to publish further issues of the Handbook on Competition Legislation, including regional and international instruments, which should be complemented by a summary of the main provisions of competition laws on the basis of inputs to be submitted by member States (see Resolution adopted by the Review Conference, TD/RBP/CONF.5.16).

3. Accordingly, the secretariat has prepared this note, containing commentaries on and texts of competition legislation of Georgia, Morocco and Ukraine.*

4. Thus, to date the UNCTAD secretariat has issued notes containing commentaries on and texts of competition and restrictive business practices legislation of 42 countries: Algeria, Belgium, Brazil, Bulgaria, Canada, Chile, Colombia, Côte d'Ivoire, Croatia, Czech Republic, Denmark, Finland, France, Georgia, Germany, Hungary, Italy, Jamaica, Japan, Kenya, Lithuania, Mexico, Morocco, Norway, Pakistan, Poland, Portugal, Republic of Korea, Romania, Senegal, Slovakia, South Africa, Spain, Sri Lanka, Sweden, Tunisia, Turkey, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela and Zambia.

5. The Secretary-General of UNCTAD, in his note of 8 March 1996, requested States which had so far not done so, or which had introduced new or amending competition legislation since their last communication to the UNCTAD secretariat, to provide the latter with their relevant legislation, court decisions and comments, on the basis of the format indicated (see below). (However, in the case of States adopting competition legislation for the first time, the commentary may not necessarily accord with the format.) In order to facilitate the reproduction of texts of legislation in more than one official language of the United Nations, States were invited to submit, if possible, the text of their legislation in one or more other languages of the United Nations.

6. The UNCTAD secretariat is grateful to the States which have contributed the material requested for the compilation of the Handbook, and once again requests States which have not yet done so to comply with the request of the Secretary-General of UNCTAD referred to above.

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* The contributions are reproduced in the language and form in which they were submitted to the secretariat.

FORMAT FOR CONTRIBUTIONS TO THE HANDBOOK

A. Description of the reasons for the introduction of the legislation.

B. Description of the objectives of the legislation and the extent to which they have evolved since the introduction of the original legislation.

C. Description of the practices, acts or behaviour subject to control, indicating for each:

(a) The type of control - for example, outright prohibition, prohibition in principle or examination on a case-by-case basis;

(b) The extent to which the practices, acts or behaviour in section D, paragraphs 3 and 4, of the Set of Principles and Rules are covered by this control, as well as any additional practices, acts or behaviour that may be covered, including those covered by controls relating specifically to consumer protection, for example controls concerning misleading advertising.

D. Description of the scope of application of the legislation, indicating:

(a) Whether it is applicable to all transactions in goods and services and, if not, which transactions are excluded;

(b) Whether it applies to all practices, acts or behaviour having effects on the country in question, irrespective of where they occur;

(c) Whether it is dependent on the existence of an agreement, or on such agreement being put into effect.

E. Description of the enforcement machinery (administrative and/or judicial), indicating any notification and registration agreements, and principal powers of body(ies).

F. Description of any parallel or supplementary legislation, including treaties or understandings with other countries, involving cooperation or procedures for resolving disputes in the area of restrictive business practices.

G. Description of the major decisions taken by administrative and/or judicial bodies, and the specific issues covered.

H. Short bibliography citing sources of legislation and principal decisions, as well as explanatory publications by Governments, or legislation, or particular parts thereof.

COMMENTARIES ON COMPETITION LEGISLATION

I. COMMENTARY BY THE GOVERNMENT OF GEORGIA ON THE LAW ON MONOPOLY ACTIVITY AND COMPETITION

A. Description of the reasons of legislation enforcement

It is notorious that the market forces by themselves are not protected from the actions restricting the competition. Therefore the main task of every State is to protect the agents in the market against any manifestation of antimonopolism including constraints of competition and unfair competition between the entrepreneurs. The mentioned task is urgent for the economies of the countries especially for the countries having a strictly monopolized past as it was in the case of the former Soviet Union countries including Georgia.

At the initial step of transition to the market economy the primary task is to create appropriate legislative and institutional bases (taking into account "the heredity" of course). In such a situation in February 1992 a new section - the Antimonopoly Department has been created within the Ministry of Economy of Georgia, the main task of which was restriction of monopolism, competition promotion, entrepreneurs' support and consumer protection.

On 17 March 1992 was adopted the resolution of the Cabinet of Ministers of Georgia N323 on measures for demonopolization of the national economy. In September 1992 the decree on "Restriction of Monopoly Activity and Competition" - the first act in that sphere, has been promulgated.

Later on (in 1996) the I aw on Monopoly Activity and Competition was adopted.

B. Description of the reasons of legislation enforcement

(a) The Law of Georgia "On Monopoly Activity and Competition" prohibits the agreements or adoption of decisions leading to the restriction of competition (art. 8); according to that Law the unfair competition is prohibited as well; moreover the executive authorities are banned from adopting such decisions which may provoke competition restriction except the cases stipulated by the Law (art. 10). The consent between non-competitive agents, among whom one holds already a monopolistic position but another is his supplier or consumer, is prohibited (art. 12). The Law bans misuse of monopolistic positions which provoke or may provoke the infringement of rights of the economic agents or consumers (art. 13). In a case of union of monopolistic agents the Law envisages the necessity of antimonopoly experts (art. 14). The Antimonopoly Service is obliged to observe the antimonopoly legislation, to consider the statements and applications and respond to the applicants within 30 days from the date of their receipt.

C. Description of sphere of application of legislation

The sphere of implementation of the Law is defined as follows (art. 4).

1. This Law affects the relations which exert influence on competition in the commodity market (production, work, service) and in which the legal and physical bodies (including foreign ones) and the government agencies of Georgia take part: ministries, other departments and institutions of local government at any level of territorial units.

2. The Law envisages the cases when the actions out of the limits of Georgia or agreements signed by the mentioned bodies restrict (or may restrict) competition or exert a negative influence on the commodity market of the country.
Article 5 of this Law stipulates:

The relations having regard to monopolistic position and unfair competititon in the market of securities and financial services shall be regulated by appropriate legislative acts except the cases when these relations affect the competition in the commodity market of the country.

The Law refers to the cases when the actions carried out or agreements signed by the mentioned bodies outside the limits of Georgia restrict (or may restrict) competition or exert a negative influence on the commodity market of the country.

As for the agreements Article 7 of the Law Stipulates: that if in the scope of activity of the Antimonopoly Service of Georgia the rules stipulated by the international agreement differ from those determined in this Law then the rules of international agreement obtain the priority.

D. Description of mechanisms of compulsion

Article 24 of this Law stipulates that: the implementation of decisions made by the Antimonopoly Service within its competence is compulsory for economic agents as well as for appropriate State bodies.

In order to observe the antimonopoly legislation the appropriate amendments are made to the Code of Administrative Infringement of the Law, to the Criminal and Procedure Codes. Namely, the Criminal Code of Georgia (Art. 165^3) stipulates:

- signing of agreements or adoption of resolutions provoking the restriction of competition in the market for conservation of influence ... is penalized in the amount of one thousand five hundred to three thousand minimum units of labour payment;
- the same actions carried out several times or by a group of persons, or which was followed by an economic effect ...

are to be punished by five years' imprisonment and are not permitted to keep a specified post or to carry out a specified activity. Moreover, the illegal use of others' trade marks is banned (as an example of unfair competition) (art. 166).

The illegal use of a trade (service) mark, of a registered firm's name or of commodity marking after appropriate administrative measures is penalized in the amount of one thousand to two thousand minimum units of labour payment.

The same action made several times or which has provoked serious damage is to be punished by imprisonment for five years.

According to the Code of Administrative Infringement of the Law the illegal use of others' trade (service) marks, a registered firm's name or commodity marking is penalized by 40 minimum units of labour payment (art. 158).

The Law envisages as well the responsibility of officials of the Antimonopoly Service of Georgia to implement the requirements concerning the observation of the Law, namely, the Article (158-2) stipulates:

- the implementation of the requirements of the State Antimonopoly Service of Georgia concerning the observation of the Law relative to the fact of cessation of violation of the Antimonopoly Law, Laws on Consumer Protection and Advertising envisages the penalties to the legal bodies in the amount of 300-600 Laris, to the executives of the enterprises, institutions and organizations in the amount of 3,000 Laris.

According to Article 159-3 of the Code of Administrative Infringement of the Law, the Antimonopoly Service is responsible for providing the information stipulated by the Law.

E. The requirement to protect competition is stipulated also in other Laws of Georgia. For instance, according to Article 22 of the Law on Activity of Commercial Banks

- banks are prohibited from making such deals when they independently or together with other bodies may find themselves in a dominant position in the market of money, finance or credit; they are prohibited as well from acting in such a way that they or third persons might be in a position to have an undeserved advantage of restricting the competition in the sphere of bank activity, of creating the tariffs and commission fees and making possible the fixation.

According to the legislation the antimonopoly policy in the sphere of bank activity is pursued by the National Bank of Georgia which determines admissible parameters of bank activity in this sphere, criteria of assessment and measures of influence.

The Law of Georgia on Insurance stipulates a follows:

1. Insurance is carried out in voluntary and compulsory forms.
2. Voluntary insurance is carried out on the basis of agreement between insurer and insured. The agreement between insurer and insured sets up the forms, conditions and rules of implementation of insurance.
3. Voluntary insurance is carried out by any licensed insurance company of Georgia.

4. Compulsory insurance is a form of insurance when the objects, forms and rules of implementation are set up by the Law and must be taken into consideration while signing the agreement between insurer and insured.

5. The insurer of compulsory insurance is obliged to sign an agreement with the insured relative to the conditions stipulated by the Law. The insurer is entitled to propose to the insured more beneficial conditions than the conditions envisaged by the Law.

6. Compulsory insurance is carried out by any licensed insurance company of Georgia.

Article 8/3 of this Law stipulates as follows:

The insured is free to choose the insurer irrespective of the form of insurance - voluntary or compulsory.

Article 30 of the Code of Georgia stipulates:

1. Labour is free.

2. The State is obliged to support the promotion of free entrepreneurship and competition. The monopoly activity is prohibited except in the cases envisaged by the Law. The rights of consumers are protected by the Law.

3. The State defends the labour rights of citizens abroad on the basis of international agreement on adjustment of relations.

4. Labour rights protection, just remuneration of labour and its security, wholesome conditions, conditions of labour for minors and women are determined by the Law.

According to Article 11 of the Law of Georgia on Fossils:

1. The user of fossils may be only the entrepreneur irrespective of the form of property including other legal and physical bodies in accordance with the established order.

2. The users of fossils have all rights set up by the licence and are responsible for observing the conditions of the licence.

According to Article 21 of the Law on Fossils:

1. In order to pursue a common State policy in the sphere of fossils there is in Georgia a single State system of fossils management.

The objective of this system is:

- to provide a practical implementation of State policy for the rational use of fossils;
- to provide the legal and physical bodies with identical possibilities of fossils utilization;
- to promote free economic relations, to pursue an antimonopoly policy in the domain of fossils utilization;
- to provide the fossils' users including the foreign ones with the necessary guarantees and to protect their rights to use fossils.

2. In Georgia the State management of fossils utilization is carried out by the Ministry but within their competence by the Departments and Supervision Body.

3. The management of use of fossils is carried out in correlation with the State Program on Utilization of Fossils through licensing control and supervision.

Article 11 of the Law of Georgia on Communications and Post stipulates:

1. Construction, reconstruction, promotion and appropriate financing of the State communication means are carried out in compliance with the State Program on the Development of Economy of Georgia.

2. Communication enterprises are empowered to build communication lines on any lot, bridges, tunnels, streets, buildings, collector, in the prohibited zones, forests and arable land irrespective of their belonging by coordinating the conditions of communication lines' building with the owners of land and objects as well as with the beneficiaries.

3. Communication enterprises are obliged to identify the damage caused by the communications construction to the land owners and objects and put in order the territory after building work.

4. While planning and building the populated area, dwelling districts and massifs, public buildings, constructions and dwelling houses, the executive authorities and project organizations are obliged to envisage separate buildings or separate premises for the location of communication enterprises according to the norms in force.

5. While building new objects the customer is obliged to make a project and build up the district and inner communication network according to the available norms.

6. In the case of constructing and reconstructing the buildings, roads, bridges or other objects the compulsory transfer of communication network and means is carried out by the customer at the expense and in accordance with technical conditions.

Article 21 "Quality of service in the sphere of communications and consumer protection" stipulates:

1. The economic subjects are obliged to offer services to the consumers in accordance with the requirements envisaged by the agreements and other documents relative to quality, standards and technical norms.

2. It is prohibited to render such services by communication means the conformity of which with the established requirements is not justified by the certificate.

3. The consumer rights protection relative to the required quality of the services of electric and postal communications, the receipt of information on the services offered by the Communications and their operators as well as other rights and mechanisms of these rights implementation are regulated by the Law of Georgia on Consumer Protection.

A very specific example of regulation of limited business practice is the activity of subjects of natural monopolies, which shall diminish according to the Presidential Decree of 20 February 1997 N 95 concerning the issues of adopted regulations.

F. Short bibliography

- Constitution of Georgia;
- Civil Code of Georgia;
- Law of Georgia on Consumer Protection;
- Law of Georgia on Advertising;
- Law of Georgia on Insurance;
- Law of Georgia on Commercial Banks Activity;
- Criminal Procedure Code of Georgia;
- Code of Georgia of Administrative Infringement of the Law;

II. COMMENTARY BY THE GOVERNMENT OF MOROCCO ON "LOI SUR LA LIBERTÉ DES PRIX ET LA CONCURRENCE"

A. Exposé des motifs de l'adoption de la loi

1) La concurrence est le meilleur processus de régulation de l'économie de marché. Depuis 1982, le Royaume du Maroc a entamé une politique de libéralisation de son économie :

- Libéralisation du commerce extérieur;
- Libéralisation des prix;
- Vaste programme de privatisation;
- Démonopolisation de grands secteurs publics et stratégiques (énergie, transports, télécommunications, export/import de denrées de base...);
- Redistribution des rôles: le privé est le principal promoteur économique.

L'État passe de l'État gérant (de l'économie) à l'État garant (du bon fonctionnement des mécanismes du marché et de l'ordre public économique).

La loi sur la concurrence est perçue comme l'instrument de régulation le plus approprié.

2) La loi sur la concurrence incite à l'optimisation des ressources aussi bien au niveau de la production (meilleure allocation) qu'à celui de la distribution (meilleur rapport qualité/prix).

3) La concurrence constitue un élément de mise à niveau de l'économie marocaine (face à la mondialisation et au libre échange) incitant à la performance et à la compétitivité.

4) La loi sur la concurrence est protectrice des PME/PMI face aux grands groupes, aux monopoles et aux pratiques anticoncurrentielles (ententes, abus de domination et mergers).

B. Objectifs de la loi

- Garantir la liberté des prix et leur formation par le libre jeu de la concurrence;
- Garantir la liberté d'accès de tous les opérateurs à toute activité;
- Protéger les intérêts économiques des consommateurs;
- Généraliser la transparence, la loyauté et le fair-play dans les relations économiques et les échanges;
- Répandre et enraciner la culture concurrence;
- Se conformer aux engagements auxquels le Maroc a librement souscrit (Traité d'association à l'Union européenne, CNUCED, OMC, UMA...).

C. Pratiques soumises au suivi

La loi ne parle pas de contrôle qui est un concept dépassé puisque lié à la réglementation et comporte une connotation répressive.

La loi sur la concurrence n'interdit rien a priori. Elle suit et lutte contre les pratiques abusives sur la base de "la règle de raison" ou "règle de bilan" au cas par cas.

Deux types de pratiques sont spécifiés :

1) Les PAC : pratiques anticoncurrentielles qui sont :
   - Les ententes (art. 6);
   - L'abus de position dominante (art. 7);
   - La dépendance économique.

2) La PRC : pratiques restrictives de la concurrence qui imposent la transparence (affichage des prix, de la qualité facturation généralisée...) et la loyauté (non-discrimination, refus de vente, vente liée, imposition de conditions injustes, prix prédateurs, publicité mensongère, rupture injustifiée de relations commerciales...).

B. Suivi des concentrations à partir d'un seuil de vigilance (de 40 %). Tout projet de concentration au-delà de ce seuil doit être notifié aux autorités en charge de la concurrence.

D. Champ d'application

Le champ d'application (Art. 2) est universel : la loi s'applique à tous les secteurs, toutes les personnes physiques ou morales, privées ou publiques et sur tout le territoire national et même aux opérations d'exportation de nature à nuire à la concurrence sur le marché domestique ou à l'activité d'un exportateur (entente dirigée contre lui par exemple).

Toutefois cette universalité du champ d'application est limitée par des exceptions pour des raisons :

1) Structurelles :
   - Situation de monopole de droit ou de fait;
   - Disposition réglementaire (subvention et fixation de prix de denrées de base par exemple).

2) Conjoncturelles :
   - Difficultés d'approvisionnement, flambée anormale de prix, crise aiguë locale ou internationale.

Toutefois, et en vue de garantir la sécurité juridique des opérateurs, le retour à la réglementation limitée (6 mois) doit être justifié et requérir l'avis du Conseil de la concurrence, "gardien du temple".

E. Mécanisme d'application

1) Organe gouvernemental : le suivi de la concurrence est une des prérogatives du Premier Ministre qui aura à son service une Direction des prix et de la concurrence ayant pour mission de suivre le fonctionnement des marchés et des secteurs et l'évolution des prix (enquêteurs).

Les projets de concentration sont également notifiés au Premier Ministre et instruits par la Direction des prix et de la concurrence (études et évaluation des impacts).

2) Organe spécial : le Conseil de la concurrence qui aura à connaître des PAC (ententes, domination, dépendance), du retour à la réglementation et des concentrations.

Son avis doit être requis par le Premier Ministre.

Comme il aura un pouvoir consultatif très large auprès du Parlement du gouvernement des opérateurs, des chambres professionnelles, des syndicats, des conseils régionaux, des associations de consommateurs et des tribunaux compétents.

3) Les tribunaux : pour la célérité et la bonne application de la loi, le Ministère de la justice est favorable à la création de chambres spécialisées en concurrence pour juger les cas litigieux.

F. Lois parallèles

- Loi sur les marchés publics (obligation d'appel à la concurrence, ouverture des marchés à tous, transparence dans la passation des marchés publics);
- Loi de régulation des télécommunications avec la création d'un organe spécialisé, l'ANRT : Agence nationale de régulation des télécoms;
- Article 36 de l'accord d'association avec l'Union européenne qui incite à la convergence et l'harmonisation des dispositions réciproques en matière de concurrence;
- Souscription aux accords de l'OMC dont les dispositions en matière de concurrence;
- Accord de libre-échange avec la Tunisie, l'Égypte, la Libye..., et en général dans le cadre de l'UMA (Union du Maghreb).

G. Principales décisions

La loi adoptée par le Parlement sera appliquée dans une année.

La première année sera consacrée à la pédagogie, à la communication pour la diffusion des nouvelles règles et à la formation des structures devant être en charge de cette nouvelle et ambitieuse mission.

Jusqu'à présent, il n'y a pas de décision d'application majeure en la matière.

H. Bibliographie

Les principales références sur lesquelles s'est basée l'élaboration du texte sur la concurrence sont :

1) La tradition musulmane :
   - Le Coran interdit textuellement le monopole, la fraude, les abus de toute sorte, l'entente nuisible à la communauté ainsi que l'usure;
   - La tradition du prophète insiste sur la transparence (l'affichage de la qualité et des prix "montrez-les") ainsi que sur la loyauté dans les relations;
   - Le deuxième khalife Omar a institué la "HISBA" ou le "suivi" des marchés en vue de la moralisation de relations économiques et commerciales et a mis à la tête de cette institution, il y a 14 siècles, une femme (Achifa Bent Abdou Allah).

2) Les législations modernes :
- La loi antitrust américaine;
- L'ordonnance française de 1986;
- La loi tunisienne sur la concurrence;
- Le SET de la CNUCED ou loi modèle.

3) L'École européenne :

Pour le Maroc, la concurrence est un outil de régulation et non pas une fin en soi. La concurrence, en incitant à l'optimisation et à la performance, constitue un facteurde développement, par l'instauration d'un climat propice à l'investissement et l'encouragementd'une dynamique d'émulation incitative au progrès et à la répartition.

III. COMMENTARY BY THE GOVERNMENT OF UKRAINE ON THE ANTIMONOPOLY LEGISLATION OF UKRAINE

A. Description of the reasons of adopting the legislation

Transition of Ukraine from state planned economy to market economy created a need for adopting a number of legislative and other normative acts that are directed towards ensuring conditions for development and functioning of the mechanism of market economy, support to and protection of free fair competition with a view to ensuring efficient economy and social progress, protection of the interests of economic entities and consumers.

B. Description of the purposes of the legislation and changes in it from the moment of its adoption

The Law of Ukraine On Limitation of Monopolism and Prevention of Unfair Competition in Entrepreneurial Activities No. 2132-XII (hereinafter referred to as "Law No. 2132") was adopted on 18 February 1992 to protect and stimulate competition. The preamble to the Law No. 2132 reads: "The present Law shall define the legal grounds for limitation and forestalling of monopolism, for prevention of unfair competition in entrepreneurial activities and for exercising state control over the observance of the antimonopoly legislation norms". The Law No. 2132 provided for the establishment of the Antimonopoly Committee of Ukraine - the state body called to "ensure, according to its competence, state control over the observance of the antimonopoly legislation, protection of the interests of entrepreneurs and consumers against violations of the antimonopoly legislation", defined its structure, competence and powers. Later on, the status of the Antimonopoly Committee of Ukraine (hereinafter referred to as "the Committee"), - its tasks, functions, powers, structure, principles of activities were defined by the Law of Ukraine On the Antimonopoly Committee of Ukraine of 26 November 1993 No. 3659-XII.

Concerning mechanisms, methods of and instruments for implementing the tasks provided for by Law No. 2132, those matters in the bulk of cases are regulated by other normative acts that have been adopted and are effective to develop provisions of this law.

On 7 June 1996, the Law of Ukraine On Protection Against Unfair Competition No. 236/96-BP (hereinafter referred to as "Law No. 236") that defines the legal grounds for protecting economic entities and consumers against unfair competition was adopted. The law came into force on 1 January 1997 and replaced such norms of Law No. 2132 that concerned unfair competition.

Thus there are three legislative acts for the time being in Ukraine that constitute the basis for the antimonopoly legislation of Ukraine.

C. Description of practices, actions or behaviour that are objects of control

Law No. 2132 defines as violations of the antimonopoly legislation the following actions:

- abuses of monopoly position;
- anticompetitive concerted actions;
- discrimination against economic entities that is practised by central and local bodies of executive power, by state bodies that regulate activities of natural monopolies and securities markets, by state bodies of privatization, by bodies of local self-government as well as by bodies of administrative and economic management and control being economic entities when they fulfil functions of management and control within such powers of the mentioned bodies that were delegated to them.

The definition of unfair competition and the responsibility for it are provided for by Law No. 236.

Abuse of monopoly position

Article 4 of Law No. 2132 defines as abuse of monopoly position the following:

1. imposition of such contract terms that create a disadvantage for contractors or imposition of such additional terms that have nothing in common with the subject of a contract, including imposition of a needless product on a contractor;
2. limitation or stoppage of production of products and their removal from circulation, which resulted or can result in creation or maintenance of deficit on the market or in setting monopoly prices;
3. partial or complete refusal to sell or purchase a product in the absence of alternative purchase or sales sources, which resulted or can result in creation of maintenance of deficits on the market or in setting monopoly prices;
4. other actions that resulted or can result in creation of barriers to entry into (withdrawal from) the market with respect to other economic entities;
5. setting of such discriminatory prices (tariffs, rates) for one's own products that restrict rights of particular consumers;
6. setting of monopoly high prices (tariffs, rates) for one's own products, which resulted or can result in violation of the rights of consumers;
7. setting of monopoly low prices (tariffs, rates) for one's own products, which resulted or can result in restriction of competition.

The actions mentioned in Points 1 and 5 are qualified as abuse of monopoly position irrespective of the consequences of performed actions.

The actions mentioned in Points 2, 3, 4, 6, 7 are qualified as abuse of monopoly position if there are the consequences provided for by the points.

The list of actions to be considered as abuses of monopoly position is made wider due to the provisions of Point 4. For qualifying them, it is necessary, however, to have the consequences provided for by the same provision.

Only such economic entities that occupy monopoly position on the market of a particular product are subjects of a violation in the form of abuse of monopoly position.

Law No. 2132 defines that position of an economic entity whose share in the market of a particular product exceeds 35 per cent is considered to be a monopoly market position. Position of an economic entity whose share in the market of a particular product is less than 35 per cent may be defined as a monopoly one by a decision taken by the Antimonopoly Committee of Ukraine if that sort of position makes it possible for the economic entity to restrict competition on the market independently or jointly with other economic entities. The procedure of defining a monopoly position of an economic entity on the market is established by the relevant normative acts of the Committee and provides for the following sequence in defining market position:

- definition of the list of products with respect to which the market position is being defined;
- definition of consumers of those products;
- definition of the period within which the market position is being defined (as a rule, one year);
- definition of the product limits of the market (groups of interchangeable products);
- definition of the geographical limits of the market;
- definition of the list of economic entities (competitors) that supply the mentioned products to the relevant markets;
- definition of the list of economic entities whose share in the market of the mentioned products exceeds 35 per cent;
- definition of the fact that economic entities whose share in the market is less than 35 per cent have market power.

Monopoly position itself of an economic entity is not prohibited.

Fair competition (Points 2, 3, 4, 7) and the rights of participants of economic circulation including those of consumers (Points 1, 5, 6) are direct objects of a violation in the form of abuse of monopoly position. Depending upon the circumstances, violations can infringe on both objects at once.

The complete prohibition affects actions that are abuses of monopoly position and legal responsibility for committing them is provided for. In addition, if an economic entity abuses its monopoly position, the Committee may adopt a decision about compulsory split-up of the economic entity being a monopolist if that sort of split-up is possible.

Anticompetitive concerted actions

Article 5 of Law No. 2132 does not contain the list of actions to be anticompetitive concerted actions, at the same time it only provides for the consequences whose coming into existence makes it possible to consider any concerted actions (agreements) to be anticompetitive.

As the article provides for, anticompetitive concerted actions are considered to constitute such concerted actions (agreements) that resulted or can result in:

1. setting (maintenance) of monopoly prices (tariffs), rebates, extra charges (additional payments), increases in prices;
2. distribution of markets on the principle of territory, assortment of products, volume of product sale or product purchase, or according to the circle of consumers, or according to other indications, which resulted or can result in their monopolization;
3. removal of sellers, buyers, and other economic entities from the market or restriction of their access into it.

Coordination of actions, i.e. the existence of an agreement in any form between participants of that sort of actions, is a necessary sign of anticompetitive concerted actions. The actions can be committed in any form, namely in writing, orally, by silent consent, etc.

Monopolization or the possibility of monopolization of markets are additional necessary consequences to qualify such concerted actions that resulted or can result in distribution of markets on the principle of territory, assortment of products, volume of product sale or product purchase, or according to the circle of consumers.

Fair competition is a direct object of a violation in the form of abuse of monopoly position. The consumer rights (Point 1) may be an additional object of the violation.

Subjects of that sort of a violation can be the following:

1. economic entities;
2. central and local bodies of executive power, state bodies that regulate activities of natural monopolies and securities markets, state bodies of privatization, bodies of local self-government as well as bodies of administrative and economic management and control.

Actions that have the signs of anticompetitive concerted actions and are commited by the subjects in the meaning of Point 2 are considered not to be the violations provided for by Article 5 of Law No. 2132, but to be such discrimination against economic entities that is provided for by Article 6 of the same law.

The norm of Article 5 is a prohibitive one. The legislation provides for no exemptions from the article. Thus the complete prohibition affects anticompetitive concerted actions.

Discrimination against economic entities

Article 6 of Law No. 2132 defines the following actions to be discrimination against economic entities that are practised by bodies of state power, bodies of local self-government and bodies of administrative and economic management and control:

1. prohibition against the establishment of new enterprises or other organization forms of entrepreneurship in any sphere of activities;
2. putting restrictions on being engaged in some activities, which resulted or can result in restriction of competition;

3. putting restrictions on production of particular kinds of a product, which resulted or can result in restriction of competition;
4. compulsion of economic entities to join associations, concerns, interbranch, regional and other amalgamations of enterprises;
5. compulsion of economic entities to practice a priority conclusion of contracts;
6. compulsion of economic entities to provide a primary supply to a particular circle of consumers;
7. making decisions about centralized distribution of products, which resulted or can result in monopoly position on the market;
8. establishment of prohibition against sale of products from one region of the republic into another one;
9. giving particular economic entities such tax and other privileges that place them in a privileged position with respect to other economic entities, which resulted or can result in monopolization of the market of a particular product;
10. restriction of the rights of economic entities to purchase and sell products;
11. establishment of prohibitions or limitations with respect to particular economic entities or groups of economic entities.

The notion of violations in the form of discrimination of economic entities provides for, at once, two objects, namely fair competition to be based on equal rights of and opportunities for economic entities and the rights of participants of economic circulation, i.e. economic entities.

Limitation of the right or opportunity to be engaged in free, left to one's discretion, economic activities, violation of the principle of independence and equality of participants of economic circulation, artificial creation of advantages for certain economic entities, which in the end results in restriction or distortion of competition and restraint of competition, constitute the essence of the violations.

The actions mentioned in Points 1, 4, 5, 6, 8, 10, 11 are defined a priori as such actions that have negative impact on competition.

Perpetration of the actions mentioned in Points 2, 3, 7, 9 does not result obligatory in negative consequences for competition. That is why the actions mentioned in those points are defined to be discrimination of economic entities only if those actions result in the relevant consequences, namely restriction of competition or monopolization of the market.

Central and local bodies of executive power, state bodies that regulate activities of natural monopolies and securities markets, state bodies of privatization, bodies of local self-government as well as bodies of administrative and economic management and control being economic entities, when they fulfil functions of management and control within such powers of the mentioned bodies that were delegated to them, are subjects of the provided violations.

Conclusion of agreements between bodies of state power, bodies of local self-government, bodies of administrative and economic management and control, conclusion of agreements between those bodies and economic entities as well as their giving natural or legal persons powers to perform the actions provided for by Points 1-7 are also considered to be discrimination against economic entities.

Exemptions from the provisions of the article may be established by legislative acts of Ukraine for the purpose of ensuring national security, defence and public interests.

Responsibility for violations of the antimonopoly legislation in the form of discrimination is provided for with respect to legal persons being economic entities. The state bodies mentioned in article 6 and bodies of local self-government as legal persons do not bear the responsibility. In cases of that sort, the Committee or its bodies draw up statements of violations of the antimonopoly legislation and send them to the court of justice for its instituting administrative proceedings against guilty officials of the mentioned bodies.

Unfair competition

Legal grounds for protecting economic entities and consumers against unfair competition are defined by the Law of Ukraine On Protection Against Unfair Competition of 7 June 1996 No. 236/96-BP (hereinafter referred to as Law No. 236).

Law No. 236 defines unfair competition as any actions performed in the course of competition that contradict rules, trade and other fair customs in entrepreneurial activities. The law qualifies as unfair competition, in particular, the following:

1. Unlawful use of an economic entity's business reputation:

(a) unlawful use of others' trademarks, advertising material and packing;

The unauthorized use of others' Christian and company names, trademarks, logos, advertising material, packing, titles of books, works of art, periodicals, place-names of commodities' origin because of which there can be confusion with respect to activities of other economic entities having the priority right to use them is qualified as unlawful.

The use of a natural person's name in a company name is not qualified as unlawful if the person's name is somehow made distinct so as to rule out its confusion with activities of other economic entity.

(b) unlawful use of products made by other manufacturers;

Launching into circulation under one's name products belonging to a different manufacturer by changing or lifting that manufacturer's name without permission from an authorized person is the unlawful use of products made by other manufacturers.

(c) copying outward appearance of products;

Copying outward appearance of products or their parts is not qualified as unlawful if that sort of copying is caused exclusively by their functional use.

That norm does not affect products being protected as objects of intellectual property.

(d) comparative advertising;

Comparative advertising is not considered unlawful if information contained therein concerning products, work or services is corroborated by such factual data that are authentic, unbiased and useful for informing consumers.

2. Obstructing other economic entities' business in the course of competition and gaining unlawful advantage in competition:

(a) discrediting an economic entity;

(b) purchase and sale of products, fulfilling work and rendering services with compulsory assortment;

(c) instigation of boycott against an economic entity;

(d) instigating a supplier to discriminate against a buyer (customer);

(e) instigating an economic entity to abrogate a contract with its competitor;

(f) bribing an employee of a supplier;

Bribing an employee of a supplier is understood as giving or offering the employee - by a competitor of the buyer - material values in return for the employee's fulfilment on non-fulfilment of his duties that ensue from or in conjunction with the contract between the supplier and buyer, which resulted or could result in getting certain advantages over the buyer by the competitor of the buyer.

(g) bribing an employee of a buyer;

Bribing an employee of a buyer is a violation being analogous to bribing an employee of a supplier.

(h) gaining unlawful advantage in competition;

Such getting advantage over other economic entity by means of violating the effective legislation that is reaffirmed by a decision made by a competent authority is gaining unlawful advantage in competition.

3. Unlawful collection, disclosure and use of commercial secrets:

(a) unlawful collection of commercial secrets;

(b) disclosure of commercial secrets;

(c) instigating to disclose commercial secrets;

(d) unlawful use of commercial secrets.

Fair competition is an object of violations in the form of unfair competition. Unlike abuses of monopoly position or performing anticompetitive concerted actions that restrict competition, the method of infringing on competition in the form of unfair competition does not restrict opportunities of other economic entities for competing and consists in "excessive" competition owing to the application of dishonest and unfair methods.

At the same time, rights of economic activities that are guaranteed by laws, including rights concerning objects of intellectual property (for example, rights for copying outward appearance of a product or rights for commercial information), can be an object of violations. In those cases the rights may be defended in legal form on the basis of the civil legislation. But this does not exclude the responsibility for violations of the antimonopoly legislation if actions of that sort are committed in order to gain advantages in competition.

Law No. 236, in comparison with Law No. 2132, comprises significantly a wider circle of subjects of violations. In particular, the sphere of application of Law No. 236 affects both natural and legal persons not being engaged in economic activities.

Control over economic concentration

Article 231 of Law No. 2132 establishes that it is necessary for economic entities to get preliminary consent of the Committee or its bodies to perform such types of concentration that are provided for by Article 23[1] and Resolution of the Cabinet of Ministers of Ukraine

of 11 November 1994 No. 765 (with further amendments) that develops the provisions of Article 23[1]. All types of concentration, upon which control is exercised, can be classified conventionally as the following two types:

- concentration resulted from merger of capital, including merger due to the establishment of a new organization and legal form of the enterprise or due to the replacement of that form of the enterprise;
- concentration resulted from getting the opportunity to have a decisive impact on economic activities of economic entities.

Both types of concentration are inseparable from each other and it is not possible to draw a clear-cut boundary between them, for example, during the establishment of an amalgamation of enterprises whose body of management can have a decisive impact on economic activities of the participants or cannot have an impact of that sort (concern, association) or when an economic entity is joining an amalgamation of that sort.

In addition, if the same person is appointed to occupy such positions in two or more competing economic entities that enable him to have a decisive impact on their economic activities, this should be reported to the Committee within a month term.

The basic criteria that have been defined by Resolution of the Cabinet of Ministers of Ukraine of 11 November 1994 No. 765 (with further amendments) and in the presence of which control on the part of the Committee or its bodies over concentration is exercised are as follows:

(a) monopoly position of any participant in concentration or exceeding 35 per cent of their joint market share - for establishment, merger, annexation, joining an amalgamation, liquidation (if the state share in the authorized capital stock exceeds 50 per cent) of economic entities as well as the situation when market share of the economic entity being established would obviously exceed 35 per cent;

(b) the state of affairs when the total cost of assets or the total sales of products of participants in concentration according to the last business year exceed $12,000,000 - for establishment and joining an amalgamation; $6,000,000 - for, merger, annexation; $600,000 - for liquidation (if the state share in the authorized capital stock exceeds 50 per cent);

(c) monopoly position of any participant in concentration or the position when the cost of an integrated complex of property of an economic entity exceeds $600,000 - for purchase, acquisition (by any means) for ownership, management, use, including lease, of the integrated complex of property of the economic entity;

(d) attaining or exceeding 25, 50 per cent of votes in the high managing body of the relevant economic entity if the total cost of the purchase exceeds $100,000 or if any participant in concentration occupies monopoly position - for purchase, acquisition (by any means) for owning or managing shares (stocks).

In addition, the mentioned resolution provides for coming to an agreement about constituent documents during the establishment of economic entities of the collective form of ownership as well as coming to an agreement about such amendments to the documents that

strengthen coordination of actions on the market or lead, by other means, to worsening conditions of competition.

Control over economic concentration provides for that the Committee or its bodies should research future concentration, define consequences of that sort of concentration of markets and give their consent to or prohibit concentration.

The Committee will give its consent to concentration unless the concentration results in monopolization of markets or substantial restriction of competition.

The Committee, however, has the right to give its consent to such concentration that results in monopolization of markets or substantial restriction of competition if positive effects obviously outweigh negative consequences caused by restriction of competition.

The antimonopoly legislation of Ukraine does not provide for exercising preliminary control over concerted actions of economic entities or over such agreements between them that are directed towards implementation of joint plans if actions of that sort are not associated with the establishment of organization and legal forms, merger of capital, the opportunity to have a decisive impact on economic activities.

Description of the sphere of application of the legislation

Law No. 2132 is applied to the relations in which economic entities take part (that is if rights or duties of economic entities are affected by the relation) if they result in restriction of competition, violation of the rights of consumers in the territory of Ukraine, irrespective of the place where the actions are committed.

Law No. 2132 does not affect relations that ensue from the rights concerning objects of intellectual property, with the exception of the cases provided for by the law itself.

The term "economic entity" denotes such a legal person, irrespective of its organization, legal and ownership forms, or such a natural person that is engaged in production, sale and purchase of products or in other economic activities; it also denotes any legal or natural person that exercises control over economic entities, a group of economic entities if one or several of them exercise control over others. Bodies of state power, bodies of local self-government and bodies of administrative and economic management and control with respect to their activities associated with production, sale, purchase of products or with respect to other economic entities are also considered as economic entities. Law No. 2132 defines the term "control" as a decisive impact on economic activities of an economic entity, irrespective of the means owing to which the impact is exerted.

Application of Law No. 2132 is limited with respect to exercising control over activities of state bodies that are not defined directly by the law. For example, the sphere of application of the mentioned law does not affect the Cabinet of Ministers of Ukraine, the National Bank of Ukraine, other state bodies that are not mentioned in Law No. 2132.

The state bodies to be affected by the law are as follows: central and local bodies of executive power, state bodies that regulate activities of natural monopolies and securities markets, state bodies of privatization. The law does not affect bodies of local self-government.

If an international agreement establishes rules different from those contained in Law No. 2132, the rules of the international agreement should be applied.

Law No. 236 affects relations involving economic entities, the bodies of state power defined by Law No. 2132, bodies of local self-government, private citizens and legal persons not being economic entities in connection with unfair competition, including actions committed outside Ukraine, if those actions have a negative impact on competition in its territory.

Law No. 236 does not affect relations involving the mentioned subjects if results of their activities take place outside Ukraine, unless an international treaty to which Ukraine is a party provides for otherwise.

State bodies authorized to apply the antimonopoly legislation

The Antimonopoly Committee of Ukraine is the state body called to exercise control over the observance of the antimonopoly legislation.

The basic tasks of the Committee are as follows:

- exercising state control over the observance of the antimonopoly legislation;
- protection of the legitimate interests, of entrepreneurs and consumers by means of taking measures associated with prevention and termination of violations of the antimonopoly legislation, with imposition of penalties for violations of the antimonopoly legislation, within its competence;
- favouring development of fair competition in all spheres of the economy.

The Committee is established to be composed of the Chairman and ten state commissioners. The Chairman of the Committee is appointed by the President of Ukraine by consent of the Supreme Rada (Parliament) of Ukraine. The Committee is subordinate to the Cabinet of Ministers of Ukraine and is accountable to the Supreme Rada (Parliament) of Ukraine.

The Committee, in accordance with its basic tasks, has, in particular, the right:

- to examine cases on violations of the antimonopoly legislation and, proceeding from the results of the examination, to take binding decisions about termination of the violations of the antimonopoly legislation, about imposition of fines on legal persons being economic entities and legal persons not being economic entities (for commitment of unfair competition), about renewal of the initial state of affairs, about compulsory split-up of monopoly formations, about termination of anticompetitive concerted actions, about repealing or making changes in unlawful acts contradicting the antimonopoly legislation by the state bodies defined by Law No. 2132 and bodies of local self-government that adopted those acts;

- to apply to a court of justice or a court of arbitration with actions (applications) in connection with violations of the antimonopoly legislation, in particular in connection with recovering imposed fines, withdrawal of profits got unlawfully owing to abuse of monopoly position or anticompetitive concerted actions, nullification of constituent documents of economic entities established without consent of the Committee or its bodies if that sort of consent was necessary;
- to send statements of the administrative violations being violations of the antimonopoly legislation committed by natural persons to courts of justice;
- to send recommendations to take measures directed towards development of entrepreneurship and competition to state bodies;
- to place submissions - compulsory for consideration - on annulment of licenses, on termination of operations of economic entities in the sphere of foreign economic activities before the relevant state bodies if the economic entities violate the antimonopoly legislation;
- to request economic entities - legal and natural persons, the state bodies that are mentioned in Law No. 2132, bodies of local self-government - to submit necessary information.

The Committee cooperates with central and local bodies of executive power, bodies of local and regional self-government for the purpose of coordinating activities to develop competition and to demonopolize the economy. Central and local bodies of executive power and bodies of local self-government are obliged to come to an agreement with the Committee about their decisions concerning demonopolization of the economy, privatization, development of competition and antimonopoly regulation (in particular, regulation of prices).

The Committee takes part in demonopolizing the economy, in particular by means of:

- establishing requirements with respect to demonopolization in the course of coming to an agreement about plans to privatize monopoly formations or by means of preventing privatization of the formations without prior demonopolization;
- giving its consent, in some cases, to the establishment, reorganization (merger, annexation) of economic entities or purchase of shares (stocks) of economic societies on condition that measures of demonopolization are taken;
- placing proposals and recommendations with respect to carrying out demonopolization and other measures directed towards development of competition before the relevant state bodies.

The Committee imposes fines on economic entities being legal persons for:

- abuse of monopoly position, anticompetitive concerted actions, discrimination against economic entities - to the amount of 5 per cent of the receipts got by the economic entity in the last account year preceding the year in which the fine is imposed;
- unfair competition - to the amount of 3 per cent of the receipts got by the economic entity in the last account year preceding the year in which the fine is imposed.

A fine to the amount of 2,000 tax-free minimum private citizen incomes is imposed on legal persons not being economic entities for committing unfair competition. Fines may be

imposed on the bodies of state power defined by Law No. 2132 and bodies of local self-government only in cases when the bodies commit violation in the course of their economic activities.

Administrative and criminal proceedings are instituted by courts of justice on the basis of statements of violations drawn by officials of the Committee or its bodies against natural persons being economic entities, officials of bodies of state power and bodies of local self-government as well as natural persons not being economic entities for violations of the antimonopoly legislation.

Appeals against the Committee's decisions may be submitted to courts of justice or courts of arbitration.

Description of some ponderable violations

Abuse of monopoly position on the part of the Ukrainian State Scientific and Production Centre on Standardization, Metrology and Certification of Ukraine

The Ukrainian State Scientific and Production Centre on Standardization, Metrology and Certification of Ukraine (hereinafter referred to as "the Centre") is accredited by the State Committee on Standardization, Metrology and Certification of Ukraine in the Ukrainian state system of certification as the body to certify systems of quality and as the body to certify products. In addition, state functions to exercise control in the sphere of standardization and certification, to exercise supervision over the observance of state standards, norms and rules, to ensure the unity of making measurements and exercising state metrological supervision were delegated to the Centre. Thus the Centre in its activities combines functions of state control with entrepreneurial activities.

In 1996 (when the case was being examined), the Centre occupied monopoly position on the national markets of certifying products for medical purposes (with the exception of testing samples) and on those of certifying products of serial production for medical purposes.

With respect to a number of firms that brought different batches of the same product to Ukraine, the Centre established the payment for rendering its services whose amount depended not on the cost of its services, but on the cost of the batch of a product. In other words, different prices were paid, in fact, for the same service. Importers overstated their prices for their products in order to cover those costs, which resulted in additional expenses defrayed by consumers.

In addition, the Centre, owing to the overstated cost of a working day when work to certify products for medical purposes is done abroad, established monopoly high prices for doing the mentioned work. The System of settling accounts provides for that the profitableness of the work associated with the compulsory certification of products for medical purposes may not exceed 30 per cent, the real profitableness, however, was equal to 902 per cent. This made it possible for the Centre to get the unlawful profit equal to 48,655 gryvnias ($1 = 3.4 gryvnias).

The Centre groundlessly refused the Firm "Modem-1" to test its samples at the Enterprise "Mira" and required that the work should be ordered directly at the Centre. At the same time,

the cost of the work to be done by the Centre was nearly twice as high as that of the work to be done by the laboratory of the Enterprise "Mira".

The Committee qualified the actions of the Centre as abuse of monopoly position on the market in the form of setting such discriminatory tariffs for one's own products that restrict rights of certain consumers; setting monopoly high prices for one's own products, which resulted in violations of consumer rights; discrimination against economic entities in the form of compulsion of entrepreneurs to practice a priority conclusion of contracts.

A fine was imposed on the Centre.

The Centre was ordered by the Committee to transfer voluntarily (i.e. the Committee should not apply to the court of arbitration) the unlawfully got profit to the state budget of Ukraine.

Unfair competition on the part of Ukrainian enterprises on the market of mineral water

Bodies of the Antimonopoly Committee, proceeding from an application of the State Antimonopoly Service of Georgia that acted to the interests of such 30 entrepreneurs of Georgia that have the priority right to use the name of origin of the product (Borzhomi) in the course of production and sale of mineral water from the Borzhomi mineral spring, conducted research of the market of mineral water for the purpose of detecting the unlawful use of the trademark "Borzhomi" on the labels of the mineral water that is sold on the Ukrainian market.

The results of the research having been taken into account, it was established that more than 33 enterprises, having no permission to be given by owners of licenses or by persons empowered by the owners, in order to mark their products (artificially mineralized water), used the designation "Borzhomi" (of the Borzhomi mineral water type) that contained comparison of the mineralized water produced by the enterprises with the real well-known medicinal and table mineral water that is produced in Georgia and is named "Borzhomi". The volumes of production amounted to 1,000,000 decalitres per year. The use of the designation "Borzhomi" (of the Borzhomi mineral water type) on labels to mark products of Ukrainian enterprises resulted in confusion with respect to products of the Georgian origin.

In addition, the Committee's bodies examined two other applications concerning the unlawful use of the designations "Narzan" and "Myrgorodska" in the course of production and sale of mineral water by two enterprises.

The Committee's bodies qualified the actions of the enterprises as unfair competition in the form of such use of others' trade mark without permission of an authorized person that can result in confusion with respect to activities of other entrepreneurs having the priority right to use the trade mark.

The violations were terminated. Fines were imposed on the enterprises.

Abuse of monopoly position on the part of the Enterprise "Kharkivkomunpromvod"

The Kharkiv Regional Territorial Production Amalgamation of Communal and Industrial Water-Supply "Kharkivkomunpromvod" (hereinafter referred to as the Enterprise "Kharkivkomunpromvod") is the subject of natural monopoly on the market of rendering services in the sphere of centralized water-supply within the Kharkiv region.

As effective normative documents of the State Committee of Ukraine on Housing and Communal Economy and those of its legal successor - the State Committee of Ukraine on Construction, Architecture and Housing Policy - provide for, services in the sphere of water-supply may be rendered by performers of the services with which consumers have contractual relations and which are represented by both enterprises or organizations that directly render communal services to consumers (housing and exploitation organizations, etc.) and producers (suppliers), including the Enterprise "Kharkivkomunpromvod". Collection of payments for the use of water from the population may be carried out, respectively, by housing and exploitation organizations and directly by producers of the services.

From December 1995, the regional state administration introduced, by its order, the system of paying for services in the sphere of water-supply rendered to the population in accordance with which services in the sphere of centralized supply of cold water should be rendered to inhabitants of the city of Kharkiv directly by the Enterprise "Kharkivkomunpromvod" and the inhabitants should transfer payments for the services to the settling account of the enterprise.

Legislation of Ukraine establishes that the consumer has the right to pay for a service according to the quantity of the rendered service. Concerning the case of supply of cold water, that quantity may be defined, depending on the discretion of the consumer, either on the basis of calculated quotas of water consumption per inhabitant of a flat (in this case there is a so-called calculated price) or on the basis of real water consumption according to the readings on a water meter.

In order to make calculations based on the readings on a water meter, the device must be registered at the organization to which the consumer pays for a service. In the case under consideration, the device must be registered at the subscribers' division of the Enterprise "Kharkivkomunpromvod". Consumers being residents of the city of Kharkiv owing to the established system of settling have no other opportunities to use their legitimate right to pay for services in the sphere of water-supply at prices defined on the basis of real volumes of consumed cold water. Even if they applied to housing and exploitation organizations in this connection, the matter of settling on the basis of the readings on water meters could not be arranged because housing and exploitation organizations of the city of Kharkiv have no contractual relations with the Enterprise "Kharkivkomunpromvod" with respect to registering household cold water meters.

The Enterprise "Kharkivkomunpromvod", however, not refusing directly to register household cold water meters installed by consumers at their expense, associated the registration with such conditions that could not be fulfilled by consumers (for example, the availability of a cold water meter on the lead-in of a multi-storey building or installation of household cold water

meters having the diameter of the conventional passage equal to 10 millimetres, despite the fact that for the time of the violation there were no water meters having that sort of diameter to be fixed in the State Register of Ukraine). The statement that this is a function of housing and exploitation amalgamations is none other than a hidden refusal to take stock of meters.

Thus the Enterprise "Kharkivkomunpromvod" in practice refused consumers to take stock of household cold water meters. By this, it, in fact, blocked installing meters in the city of Kharkiv (for the time being, according to the information given by the Enterprise "Kharkivkomunpromvod" itself, they took stock of two cold water meters while in other regions the relevant number exceeds several thousand), which lays obstacles to settling the problem of the economical use of resources, requires additional subsidies from the budget, increases social tension.

The Enterprise "Kharkivkomunpromvod" compelled consumers to pay for rendered services in accordance with the quotas of water consumption and imposed the calculated price on them.

At the same time, the calculated price being imposed on a consumer who has a meter installed in his flat is a discriminatory price because it restricts rights of certain consumers, namely of those who wish to pay for rendered services, proceeding from readings on water meters. That price is also a monopoly high price because, first, it is established by a monopoly formation and, second, as statistical data show, that price is higher: the consumer, paying the calculated price, pays for a larger quantity of water than he uses in fact and thus he pays a higher price for a cubic meter of the used water. By the way, the calculated quotas of cold water consumption per inhabitant on the basis of which settling takes place for lack of meters, in Kharkiv are among the highest ones in Ukraine.

The Kharkiv Territorial Office of the Committee qualified the actions of the Enterprise "Kharkivkomunpromvod" as abuse of monopoly position in the form of such complete refusal to sell a product in the absence of alternative sources of supply that resulted in setting monopoly prices and setting such discriminatory prices for one's own products that restrict rights of certain consumers. The Enterprise "Kharkivkomunpromvod" was obliged to terminate the violation. The Committee, taking into account the hard financial position of the enterprise, the high degree of the wear and tear of water pipeline network, imposed the fine equal to 450,000 gryvnias on the Enterprise "Kharkivkomunpromvod".

Discrimination against economic entities practised by the Donetsk Regional State Administration

In 1997-98, the Donetsk Regional State Administration issued a number of orders introducing price regulation on the markets of liqueur, vodka and tobacco products. In particular, economic entities, irrespective of the form of ownership, were obliged to set such prices for vodka and liqueur products (including imported ones) being brought to the region that were equal to wholesale prices for that sort of products made by local producers (but not less than 2.5 gryvnias for a bottle, the cost of glass package not being taken into account); to set that sort of prices for vodka and liqueur products being the remainder as of 5 August 1997; to apply the single level of trade additional payments in the course of forming retail prices for vodka and

liqueur products that are made within the region and are brought from other regions (with the exception of imported ones).

Later on, the regional state administration established that the enterprises of the region that make vodka, liqueur products, cognac, wine, beer, champagne were obliged to apply the special additional payment equal to 5 per cent to wholesale prices; economic entities, irrespective of the form of ownership, in the course of setting retail prices for vodka, liqueur products, cognac, wine, beer, champagne and beer in bottles were obliged to calculate trade additional payments proceeding from wholesale prices and taking into account the special additional payment and, in addition, to apply the special additional payment equal to 5 per cent to the amount of the trade additional payment; special additional payments should be applied to such products that were made within the region or were brought from other regions or from abroad.

The regional state administration, by its another order, obliged economic entities, irrespective of the form of ownership, to set such prices for vodka and liqueur products being brought into the region that were equal to the highest wholesale prices for the analogous (from the point of view of their names) products made by local producers.

The Donetsk Regional State Administration, in fact, established price regulation on the market of vodka and liqueur products. Setting the special additional payment with respect to the mentioned products and setting such prices for vodka and liqueur products being brought into the region (including imported ones) that were equal to wholesale prices for those products made by local producers (but not less than 2.5 gryvnias for a bottle, the cost of glass package not being taken into account) restricted competition on the mentioned market, violated rights of both producers and consumers of those products, placed entry market barriers to economic entities from other regions.

In spite of the fact that the Committee, applying to the Donetsk Regional State Administration, had required to bring the mentioned orders to conformity with the requirements of the antimonopoly legislation, the administration did not respond, but issued new orders containing the analogous norms, in particular it obliged economic entities, irrespective of the form of ownership, to apply the special payment equal to 5 per cent to the amounts of wholesale and trade additional payments in the course of setting prices for tobacco, vodka and liqueur products, starting from 1 April.

The issued orders not only violated the antimonopoly legislation, but also restricted the right of economic entities to be engaged independently in economic activities, including the right to set prices independently.

The Antimonopoly Committee of Ukraine admitted that the Donetsk Regional State Administration, owing to the mentioned actions, had committed a violation of the antimonopoly legislation in the form of discrimination against economic entities by means of the restriction of their rights to purchase and sell products.

The Donetsk Regional State Administration was obliged to terminate the violation and to bring its orders to conformity with the requirements of the antimonopoly legislation.

Anticompetitive concerted actions between state enterprises of the grain-processing industry

Proceeding from the results of the research of markets of activities of enterprises of the grain-processing industry in the Poltava region, anticompetitive concerted actions of five enterprises operating on the market of flour and bran within the region were detected. The actions consisted in the fact that the enterprises, at their joint meeting, took a decision to set the single prices for flour of the highest grade, for rye-flour and bran. The decision was fulfilled by all those enterprises.

The arrival to the mentioned decision resulted in the removal of competition among those enterprises and, owing to the fact that their joint share in the market of flour was equal to 81.5 per cent and that of bran was equal to 74.8 per cent, this made it possible for them to raise the price for flour by 20 per cent and that for bran nearly in 2.5 times. The rise in the price for bran affected other markets, in particular the market of mixed feed where prices increased by more than 10 per cent because the share of bran in the production of mixed feed is up to 50 per cent.

The Poltava Territorial Office of the Committee qualified the actions of the five enterprises of the grain-processing industry as a violation of the antimonopoly legislation in the form of such anticompetitive concerted actions that resulted in setting monopoly prices.

The violation was terminated. A fine was imposed on the enterprise. The unlawfully got profit was withdrawn.

Demonopolization of the State Communal Enterprise of Everyday Repairs and Other Services "Artemivsk-Servis"

The State Communal Enterprise of Everyday Repairs and Other Services "Artemivsk-Servis" (hereinafter referred to as the Enterprise "Artemivsk-Servis") occupies monopoly position on the market of rendering services in the sphere of everyday repairs and other services in the city of Artemivsk (the Donetsk region) and includes 36 separated structural subdivisions.

That economic entity was to be demonopolized in the course of privatization. The Artemivsk Representatives' Office of the State Property Fund of Ukraine, violating the effective legislation, approved, without participation of a representative of the Donetsk Territorial Office of the Committee, the plan to privatize the Enterprise "Artemivsk-Servis" and the chairman of the Artemivsk City Council of People's Deputies, by his order, registered the Enterprise "Artemivsk-Servis" as the Public Corporation "Artemivsk-Servis". In this connection the Donetsk Territorial Office of the Committee brought an action to the Court of Arbitration of the Donetsk Region in order to annul the plan to privatize the Enterprise "Artemivsk-Servis".

The Court of Arbitration of the Donetsk Region complied with the action of the Donetsk Territorial Office of the Committee.

To fulfil the court decision and to demonopolize the Enterprise "Artemivsk-Servis", the Artemivsk Representatives' Office of the State Property Fund of Ukraine, taking into account the fact that the structural subdivisions must be separated from the Enterprise "Artemivsk-Servis", changed the privatization plan and came to an agreement with the Donetsk Territorial Office of the Committee about it.

Refusal of the Ivano-Frankivsk Territorial Office of the Committee to give its consent to joining the Transport Production Amalgamation "Ivano-Frankivskavtotrahs" by the Ivano-Frankivsk Regional Enterprise of Bus Stations

The transport Production Amalgamation "Ivano-Frankivskavtotrans" (hereinafter referred to as "the Amalgamation") applied to the Ivano-Frankivsk Territorial Office of the Committee for giving its consent to joining the Amalgamation by the Ivano-Frankivsk Regional Enterprise of Bus Stations (hereinafter referred to as "the Enterprise") and to the establishment, on their basis, of the Ivano-Frankivsk Enterprise of Motor Transport Services "Ivano-Frankivskavtotrans" that was to be privatized later on.

The Ivano-Frankivsk Territorial Office of the Committee did not give its consent to the mentioned joining because it might lead to strengthening of monopolization of passenger transportation markets, restriction of competition, setting of monopoly high prices for transport services in the sphere of passenger transportation in the region. At the same time, it was proposed to privatize the Enterprise as a legal person and to transfer functions of control over stocks and shares of the all-state ownership enterprises to the Ivano-Frankivsk Regional Office of the State Property Fund of Ukraine, having withdrawn them from the Amalgamation.

The Committee's requirements being taken into account, the Enterprise was privatized as an independent legal person.

The Ministry of Transport of Ukraine, proceeding from materials of the Ivano-Frankivsk Regional State Administration, issued an order to liquidate the Amalgamation.

The Association of Motor Entrepreneurs "Ivano-Frankivsktrans" was established on the basis of the Amalgamation property by consent of the Ivano-Frankivsk Territorial Office of the Committee.

ANNEX I

GEORGIA

Law of the Republic of Georgia on "Monopoly Activity and Competition"

Main Definitions Used in the Law

"Economic Agent (subject - entrepreneur)" - any legal and physical person engaged in entrepreneurship without respect of organizational and legal type of company, kind of ownership and nature of activity.

"Substitutional Goods"- group of products which are so similar in their functional purpose, use, quality, technical characteristics or any other parameters, that the buyer substitutes or is ready to substitute one product to another within the process of consumption (including production).

"Competition"- the process of rivalry of economic agents where the independent actions of any of them restrict the ability of the rival to gain in advantage at the market and promote the production of consumer-needed goods.

The competition will arise in the event when some economic agents simultaneously enter the market, the delivery of Substitutional goods takes place and decision on consumption will be made due to price, quality, wrapping, service and other economic parameters.

"Monopoly Position" - the unique position of an economic agent, public agency when he (it) is enabled to make significant influence upon market and to restrict competition.

"Monopoly Activity" - the activity where an economic agent is enabled to influence upon market price of the Substitutional competitive (compatible) goods in the merchandise market and to restrict competition.

"Natural Monopoly" - the position of merchandise market where satisfaction of the demand at this market proceeding from the technological features of production (related to essential decrease in operating costs for a unit of production according to the expansion of operations) will be more efficient in the terms of non-existence of competition, and where the goods produced by the subjects of natural monopoly cannot be substituted to any other goods, resulting that the demand for natural monopoly goods, as compared with the demand for goods of other kinds, is less dependent on alteration in the price of those goods.

Chapter 1

General Provisions

Article 1

The aim of this Law is to create the organizational and legal base for promotion of entrepreneurship and arrangement of competitive surrounding in Georgia as well as protection of consumer's rights.

The present Law determines the responsibility of an economic agent (subject - entrepreneur) for misuse of monopoly activity, unfair competition and other actions which provoke or may provoke the restriction or elimination of competition in the market.

The economic subject shall be banned and the monopoly activity.

1. The state list of natural monopolies shall be approved by the President of Georgia.

Article 2

The antimonopoly law of Georgia comprises the Constitution of Georgia, the present Law and other appropriate legislative acts.

Article 3

The state control over the implementation of the present Law shall be exercised by the antimonopoly department of Georgia, and by respective authorized agencies - in Abkhazia and Adjaria autonomous republics and other territorial units.

Chapter 2

Sphere of Application

Article 4

The present Law applies to the relations influencing upon competition in the merchandise (production, work, service) market and where the legal and physical (including foreign) persons, governmental bodies of Georgia: ministries, other state departments and institutions, executive and local administration bodies of territorial units of any level take part.

The Law applies also to those events where any action or agreement executed by the said persons outside Georgia restrict (or may restrict) the competition or affect adversely on the merchandise market of the country.

Article 5

The Law shall not apply to the terms related to the copyright and patent law, trade marks and industrial designs.

1. Proceeding from interests of the country the Parliament of Georgia has the right to limit in full or partially the effect of this Law to separate kinds of monopoly activity.

Article 6

The terms related to monopoly position and unfair competition in the securities and financial service market shall be regulated by the appropriate legislative acts except those events where those terms affect on the existing competition in the merchandise market of the country.

Article 7

If the international agreement in the sphere of antimonopoly activity where Georgia is the party establishes the rules other than in this Law, then the rules stipulated by the international agreement obtain the priority.

Chapter 3

Ban on Restriction of Competition

Article 8

The economic agent shall be banned the execution of any agreement or making of any decision which lead to the restriction of competition, namely:

restricts one of the parties in choice of a market, supply resources, provider and consumer;
a party to agreement commits one of the partners to deliver or to purchase instead of or in addition to the goods to the agreement, such goods that neither in object nor by trading procedures is related to the goods determined in the agreement;
essentially restricts the competition in the substitutional goods market.

Article 9

1. The unfair competition shall be prohibited.
2. The following shall be deemed as unfair competition:
dissemination by means of communication of such information that creates false understanding to the addressee and this prevents him from a certain economic action;

(a) concealment of the real aim of transaction made by the economic agent for misleading of a counterpart and obtaining advantage within the competition;
gaining advantage in competition by use of dumping prices and misleading of a consumer;
harming reputation (creation of false view on an enterprise, production, economic and trading activity) of his rival, groundless criticism or libel of the rival;
unauthorised use of the trade mark and firm name of a rival or any third person;

(b) misappropriation of shape, design or packing of goods of the rival or any third person;
receipt, obtaining, use or dissemination of technological, scientific, industrial and business information and commercial secrets without the owner's consent.

Article 10

The following shall be prohibited to the state administration bodies: joining, merger, creation of unions, associations, concerns, consortia, management agencies, intersectoral and regional associations if this leads to slackening or restriction of competition; establishment of

such tax exemptions or other privileges for the economic agent that grant him advantages as compared with his rivals (potential rivals) and leads to the restriction of competition; banning, suspension or otherwise prevention of economic activity and independence of the economic agent in cases other than those provided by the legislation of Georgia; (a) creation of state structures or granting of existing structures with such powers that lead to restriction of competition for purpose of monopolization of production or realization of goods; passing decisions that may lead to granting the economic agent with monopoly position and essentially restricts the competition and free pricing in cases other than those provided by the legislation of Georgia.

Chapter 4

Monopoly Position

Article 11

The economic agent shall be deemed as holding monopoly position if his part in the concrete merchandise market directly or indirectly (through affiliates, subsidiaries or otherwise) exceeds the limited value established by the antimonopoly department.

Indices of limited value established by the antimonopoly department shall come into effect on promulgation.

Article 12

The agreement (coordinating action) between non-competing economic agents is prohibited, where one of the economic agents holds monopoly position and the second is his supplier (provider) or consumer that leads or may lead to the essential restriction of competition.

Article 13

The economic agent holding the monopoly position shall be prohibited of misuse of his position for purpose of discrimination of other partners in the market. Such action shall be deemed as misuse of monopoly position, which leads or may lead to the infringement of interests of other economic agents or a consumer, that is:

decline in production or cessation of production, withdrawal of goods from circulation and its stocking for creation or maintenance of deficit as well as for influence upon prices;

(a) creation of conditions preventing the entering or leaving the market of other economic subject or his being in the market;

creation of such discriminating conditions to participants in the market that foist on them disproportionally low or high purchase or selling prices, or that connect the execution of agreement with execution of such additional terms which neither in object nor in trading procedures are connected with the agreement; any kind of compulsion for entering the agreement;

monopoly establishment of high or low price which rather differs the expenses for production and realization of produce for a certain period;

(b) reduction in or halting of production of goods which are in demand if its production may be continued without possible losses;

application of dumping prices;

other action arising from the restriction of competition or infringement of legal interests of an economic agent or a consumer.

Article 14

When joining another economic agent the economic agent of the monopoly position shall pass through the antimonopoly examination for registration.

1. In event of negative finding issued by the antimonopoly department the court shall refuse registration to the economic agent.

Article 15

In event of more than one violation of antimonopoly legislation by the economic agent of monopoly position the state antimonopoly department is entitled to raise a question before the appropriate bodies for the forced splitting, if there is the possibility of organizational and territorial division of the enterprise, or other measures of antimonopoly effect shall be used (establishment of fixed prices, limit of profitability, etc.).

Chapter 5

Antimonopoly Department

Article 16

The state antimonopoly department of Georgia is the subject of public law existing at the Ministry of Economy of Georgia. The head of this department shall be appointed by nomination of the Minister of Economy, and released by the President of Georgia.

Article 17

For executing the antimonopoly policy the antimonopoly council consisting of the chairman and 10 members shall be created at the antimonopoly department for term of five years. The members of council, where three are the representatives of consumers, entrepreneurs and scientific organizations and institutions, shall be appointed by the President of Georgia.

The chairman of the antimonopoly council is at the same time the head of the antimonopoly department. The statute of the antimonopoly council shall be approved by the President of Georgia.

Article 18

Appropriate antimonopoly departments shall operate in Abkhazia and Adjaria autonomous republics and other territorial units. The heads of those departments shall be appointed and released by the head of the antimonopoly department of Georgia under consent of the executive bodies of autonomous republics and other territorial units.

Article 19

The term of reference of the antimonopoly department of Georgia and its territorial departments shall be determined by this Law and the statute of the antimonopoly department which shall be approved by the President of Georgia.

Article 20

Main directions of activity of the antimonopoly department are as follows: creation of conditions for development of competition;

(a) eradication of misuse of monopoly activity and monopoly position;

(b) implementation of preliminary measures for preventing unfair competition;

(c) protection of consumers' rights;

(d) regulation of advertising;

analysis of merchandise and financial markets for revealing the facts of restriction of competition and unfair competition;

(e) the working out of measures for demonopolizing spheres of production, circulation and finances;

(f) submission to the executive power for consideration of obligatory proposals for implementation of measures for development of competition and restriction of monopoly activity;

(g) consideration of facts of violation of antimonopoly law and passing appropriate decisions within its terms of reference;

cooperation with governmental bodies as well as with international organizations for solution of problems of organizational and legal, technical and financial ensuring of protection of antimonopoly law and consumers' rights.

Article 21

1. The antimonopoly department shall be entitled:

to raise the question before the appropriate bodies on halting or prohibition of activity of that organization which violate the antimonopoly law;

(a) to demand from the body having violated this Law the abolishment of the illegal by passed decision, otherwise, to raise the question before the superior body or official;

to demand from the economic agent the abolishment of the agreement executed and decision passed with violation of this Law. Otherwise, to lodge a complaint with the court and take a part in the consideration of the case;

to demand from the economic agent the information of his legal, organizational and economic relations;

to formalize with documentation related to the activity of an economic agent;
on the grounds of court's ruling to examine and receive documentation connected with the activity of an economic agent; this is not subject to publication and shall be used for the consideration of the case only.

If following the examination of documents and facts connected with the case does not prove the suspicion of the antimonopoly department has not been proved, it shall compensate to the economic agent the total damages in amount and by order established by the legislation of Georgia;

to raise a question on administrative or criminal responsibility of the official having violated the antimonopoly law;
to demand any necessary information from the ministries, other state departments and institutions, governmental bodies of territorial units. In event of non-implementation of the demand to raise the question on disciplinary or administrative responsibility of officials of those bodies;
for passing the decision to demand from the appropriate state body or economic agent the information related to the instituted case and to send prior notification in writing indicating the committed violation and the date of hearing on this matter;
In the event of the necessity arising of official hearing of the case the economic agent shall be given the possibility to formalize with the documentation on his case created in the antimonopoly department.

If within 30 days following the demand of the antimonopoly department the appropriate state body or economic agent does not provide the said department with the required information the antimonopoly department shall make decision on the instituted case on the grounds of facts and data being in its hands;

to determine the limit of economic agent's share in the merchandise and finances market on the grounds of economic analysis in the concrete sphere of economic activity; this limit shall be valid after promulgation:

2. The antimonopoly department shall execute its powers stipulated by clauses "d" and "e" of this Article only in event of substantiated suspicion of misuse of the economic agent of his monopoly position and of facts of unfair competition.

Article 22

If the antimonopoly department fixes the fact of misuse of economic agent of his monopoly position, it may oblige the economic agent to stop the existing situation.

Article 23

When acquiring stocks or share of another economic agent (or its subsidiary) the economic agent with monopoly position shall obtain the antimonopoly department expert's report.

Article 24

The decision of the antimonopoly department made within the terms of its reference is binding upon both the economic agent and the appropriate state body.

Article 25

1. The antimonopoly department shall:
protect the antimonopoly law;
examine the entered applications and petitions and respond to the applicants in writing within 30 days following the date of their receipt; protect and not disclose the state commercial secrets. The damage incurred as a result of disclosure of the data containing secrets shall be compensated by the antimonopoly body in amount and by order established by the legislation of Georgia.

Article 26

The antimonopoly department shall once a year submit the report of its work done to the President of Georgia.

Chapter 6

Responsibility for Violation of the Law on "Monopoly Activity and Competition"

Article 27

A person violating this Law shall bear the financial, administrative or criminal responsibility.

Article 28

The amount of penalty imposed for violation of this Law shall be determined in accordance with the legislation of Georgia.

Chapter 7

Procedure of Appealing against Decision of the Antimonopoly Department

Article 29

An economic agent as well as other person concerned shall be entitled to apply to the court, appropriate body or any official directly, for stopping the violation of antimonopoly law and for compensation of the incurred damage. He shall be entitled also to appeal in the court against the decision of the antimonopoly department.

Article 30

The damage incurred to the economic agent by the illegal actions of the state antimonopoly department shall be compensated to him in accordance with the legislation of Georgia.

President of Georgia — Eduard Shevardnadze
Tbilisi
25.06.1996
N 288-IIs

(signed and sealed)

ANNEXE II

MAROC

Loi No 06-99
sur la liberté des prix et de la concurrence

PRÉAMBULE

La présente loi a pour objet de définir les dispositions régissant la liberté des prix et d'organiser la libre concurrence. Elle définit les règles de protection de la concurrence afin de stimuler l'efficience économique et d'améliorer le bien-être des consommateurs. Elle vise également à assurer la transparence et la loyauté dans les relations commerciales.

TITRE PREMIER

Champ d'application

Article premier

La présente loi s'applique :

1) À toutes les personnes physiques ou morales qu'elles aient ou non leur siège ou des établissements au Maroc, dès lors que leurs opérations ou comportements ont un effet sur la concurrence sur le marché marocain ou une partie substantielle de celui-ci;

2) À toutes les activités de production, de distribution et de service;

3) Aux personnes publiques dans la mesure où elles interviennent dans les activités citées au paragraphe 2 ci-dessus comme opérateurs économiques et non dans l'exercice de prérogatives de puissance publique ou de missions de service public;

4) Aux accords à l'exportation dans la mesure où leur application a une incidence sur la concurrence sur le marché intérieur marocain.

TITRE II

De la liberté des prix

Article 2

Les prix des biens, des produits et des services sont déterminés par le jeu de la libre concurrence sous réserve des dispositions des articles 3, 4 et 83 ci-après.

Article 3

Dans les secteurs ou les zones géographiques où la concurrence par les prix est limitée en raison soit de monopole de droit ou de fait, soit de difficultés durables d'approvisionnement, soit de dispositions législatives ou réglementaires, les prix peuvent être fixés par l'administration après consultation du Conseil de la concurrence prévu à l'article 14 ci-dessous. Les modalités de leur fixation sont déterminées par voie réglementaire.

Article 4

Les dispositions des articles 2 et 3 ci-dessus ne font pas obstacle à ce que des mesures temporaires contre des hausses ou des baisses excessives de prix, motivées par des circonstances exceptionnelles, une calamité publique ou une situation manifestement anormale du marché dans un secteur déterminé, peuvent être prises par l'administration, après consultation du Conseil de la concurrence. La durée d'application de ces mesures ne peut excéder six (6) mois prorogeables une seule fois.

Article 5

À la demande des organisations professionnelles représentant un secteur d'activité ou sur l'initiative de l'administration, les prix des produits et services dont le prix peut être réglementé peuvent faire l'objet d'une homologation par l'administration après concertation avec lesdites organisations.

Le prix du produit ou service concerné peut alors être fixé librement dans les limites prévues par l'accord intervenu entre l'administration et les organisations intéressées.

Si l'administration constate une violation de l'accord conclu, elle fixe le prix du produit ou service concerné dans les conditions fixées par voie réglementaire.

TITRE III

Des pratiques anticoncurrentielles

Article 6

Sont prohibées, lorsqu'elles ont pour objet ou peuvent avoir pour effet d'empêcher, de restreindre ou de fausser le jeu de la concurrence sur un marché, les actions concertées, conventions, ententes ou coalitions expresses ou tacites, sous quelque forme et pour quelque cause que ce soit, notamment lorsqu'elles tendent à :

1) Limiter l'accès au marché ou le libre exercice de la concurrence par d'autres entreprises;
2) Faire obstacle à la formation des prix par le libre jeu du marché en favorisant artificiellement leur hausse ou leur baisse;
3) Limiter ou contrôler la production, les débouchés, les investissements ou le progrès technique;
4) Répartir les marchés ou les sources d'approvisionnement.

Article 7

Est prohibée, lorsqu'elle a pour objet ou peut avoir pour effet d'empêcher, de restreindre ou de fausser le jeu de la concurrence, l'exploitation abusive par une entreprise ou un groupe d'entreprises :

1) D'une position dominante sur le marché intérieur ou une partie substantielle de celui-ci.

L'abus peut notamment consister en refus de vente, en ventes liées ou en conditions de vente discriminatoires ainsi que dans la rupture de relations commerciales établies, au seul motif que le partenaire refuse de se soumettre à des conditions commerciales injustifiées. Il peut consister également à imposer directement ou indirectement un caractère minimal au prix de revente d'un produit ou d'un bien, au prix d'une prestation de services ou à une marge commerciale.

L'abus peut consister aussi en offres de prix ou pratiques de prix de vente aux consommateurs abusivement bas par rapport aux coûts de production, de transformation et de commercialisation, dès lors que ces offres ou pratiques ont pour objet ou peuvent avoir pour effet d'éliminer un marché, ou d'empêcher d'accéder à un marché, une entreprise ou l'un de ses produits.

Article 8

Ne sont pas soumises aux dispositions des articles 6 et 7 ci-dessus les pratiques :

1) Qui résultent de l'application d'un texte législatif ou d'un texte réglementaire;

2) Dont les auteurs peuvent justifier qu'elles ont pour effet de contribuer au progrès économique et que ses contributions sont suffisantes pour compenser les restrictions de la concurrence et qu'elles réservent aux utilisateurs une partie équitable du profit qui en résulte, sans donner aux entreprises intéressées la possibilité d'éliminer la concurrence pour une partie substantielle des produits et services en cause. Ces pratiques ne doivent imposer des restrictions à la concurrence que dans la mesure où elles sont indispensables pour atteindre cet objectif de progrès.

Certaines catégories d'accords ou certains accords, notamment lorsqu'ils ont pour objet d'améliorer la gestion des petites ou moyennes entreprises ou la commercialisation par les agriculteurs de leurs produits, peuvent être reconnus comme satisfaisants aux conditions prévues au paragraphe 2 du premier alinéa ci-dessus par l'administration après avis du Conseil de la concurrence.

Article 9

Tout engagement ou convention se rapportant à une pratique prohibée en application des articles 6 et 7 ci-dessus est nul de plein droit.

Cette nullité peut être invoquée par les parties et par les tiers; elle ne peut être opposée aux tiers par les parties; elle est éventuellement constatée par les tribunaux compétents à qui l'avis du Conseil de la concurrence, s'il en est intervenu un, doit être communiqué.

TITRE IV

Des opérations de concentration économique

Article 10

Tout projet de concentration ou toute concentration de nature à porter atteinte à la concurrence, notamment par création ou renforcement d'une position dominante, est soumis par le Premier Ministre à l'avis du Conseil de la concurrence.

Ces dispositions ne s'appliquent que lorsque les entreprises qui sont parties à l'acte, ou qui en sont l'objet, ou qui leur sont économiquement liées ont réalisé ensemble, durant l'année civile précédente, plus de 40 % des ventes, achats ou autres transactions sur un marché national de biens, produits ou services de même nature ou substituables, ou sur une partie substantielle de celui-ci.

Article 11

Une concentration au sens du présent titre résulte de tout acte, quelle qu'en soit la forme, qui emporte transfert de propriété ou de jouissance sur tout ou partie des biens, droits et obligations d'une entreprise ou qui a pour objet ou pour effet de permettre à une entreprise ou à un groupe d'entreprises d'exercer, directement ou indirectement, sur une ou plusieurs autres entreprises une influence déterminante.

Article 12

Les entreprises sont tenues de notifier au Premier Ministre tout projet de concentration. La notification peut être assortie d'engagements.

Le silence gardé pendant deux (2) mois vaut décision tacite d'acceptation du projet de concentration, ainsi que des engagements qui y sont joints le cas échéant.

Ce délai est porté à six (6) mois si le Premier Ministre saisit le Conseil de la concurrence.

Le Premier Ministre ne peut saisir le Conseil de la concurrence après l'expiration du délai prévu à l'alinéa 2 ci-dessus, sauf en cas de non-exécution des engagements dont la notification précitée est éventuellement assortie.

Durant ce délai, les entreprises concernées ne peuvent mettre en œuvre leur projet.

Les organismes visés au paragraphe 2 de l'article 15 ci-après peuvent également informer le Premier Ministre qu'une opération de concentration s'est réalisée en contravention aux dispositions du premier alinéa ci-dessus.

Article 13

Les dispositions du présent titre ne sont applicables qu'aux actes passés ou conclus postérieurement à la date de la présente loi.

TITRE V

Du Conseil de la concurrence

Article 14

Il est créé un Conseil de la concurrence aux attributions consultatives aux fins d'avis, de conseils ou de recommandations.

Chapitre premier

De la compétence du Conseil de la concurrence

Article 15

Le Conseil de la concurrence peut être consulté par :

1) Le Gouvernement, pour toute question concernant la concurrence;
2) Dans la limite des intérêts dont ils ont la charge, les conseils de régions, les communautés urbaines, les chambres de commerce, d'industrie et de services, les chambres d'agriculture, les chambres d'artisanat, les chambres de pêches maritimes, les organisations syndicales et professionnelles ou les associations de consommateurs reconnues d'utilité publique, sur toute question de principe concernant la concurrence;
3) Les juridictions compétentes sur les pratiques anticoncurrentielles définies aux articles 6 et 7 ci-dessus et relevées dans les affaires dont elles sont saisies.

Article 16

Le Conseil de la concurrence est obligatoirement consulté sur tout projet réglementaire instituant un régime nouveau ou modifiant un régime en vigueur ayant pour effet :

1) De soumettre l'exercice d'une profession ou l'accès à un marché à des restrictions quantitatives;
2) D'établir des monopoles ou d'autres droits exclusifs ou spéciaux sur le territoire du Maroc ou dans une partie substantielle de celui-ci;
3) D'imposer des pratiques uniformes en matière de prix ou de conditions de vente;
4) D'octroyer des aides de l'État ou des collectivités locales.

Article 17

Le Conseil de la concurrence exerce en outre les attributions définies par la présente loi en matière de concentrations, de pratiques anticoncurrentielles visées aux articles 6 et 7 ci-dessus, ainsi qu'en matière de prix.

Chapitre II

De la composition du Conseil de la concurrence

Article 18

Le Conseil de la concurrence est composé de membres dont :

- Six (6) membres représentant l'administration;
- Trois (3) membres choisis en raison de leur compétence en matière de concurrence ou de consommation;
- Trois (3) membres exerçant ou ayant exercé leurs activités dans les secteurs de production, de distribution et de services.

Article 19

Le président est nommé par le Premier Ministre.

Les autres membres du Conseil de la concurrence sont nommés pour cinq (5) ans par décret sur proposition de l'administration et des organismes concernés.

Leur mandat est renouvelable.

Article 20

Le président exerce ses fonctions à plein temps.

Il est soumis aux règles d'incompatibilité prévues pour les emplois publics.

Tout membre du Conseil de la concurrence doit informer le président des intérêts qu'il détient et des fonctions qu'il exerce dans une activité économique.

Aucun membre du Conseil de la concurrence ne peut donner avis dans une affaire où il a un intérêt ou s'il représente ou a représenté une partie intéressée.

Article 21

Sont placés auprès du Conseil de la concurrence, à la demande de son président, des fonctionnaires classés au moins dans l'échelle de rémunération No 10 ou dans un grade équivalent pour remplir les fonctions de rapporteurs.

Un rapporteur général est désigné par le président du Conseil parmi les rapporteurs.

Article 22

Le rapporteur général anime et suit le travail des rapporteurs.

Les rapporteurs sont chargés d'examiner les affaires qui leur sont confiées par le président du Conseil de la concurrence.

Article 23

Le Conseil de la concurrence établit son règlement intérieur qui fixe notamment les conditions de son fonctionnement et de son organisation.

Le Conseil de la concurrence adresse chaque année au Premier Ministre un rapport d'activité. Les avis, les recommandations et les consultations rendus en application de la présente loi sont annexés à ce rapport.

Chapitre III

De la procédure devant le Conseil de la concurrence

Section 1

De la procédure relative aux pratiques anticoncurrentielles

Article 24

Le Premier Ministre, ou les organismes visés au deuxième paragraphe de l'article 15 ci-dessus pour toute affaire qui concerne les intérêts dont ils ont la charge, peuvent saisir le Conseil de la concurrence de faits qui leur paraissent susceptibles de constituer des infractions aux dispositions des articles 6 et 7 ci-dessus.

Article 25

Le Conseil de la concurrence examine si les pratiques dont il est saisi constituent des violations aux dispositions des articles 6 et 7 ci-dessus ou si ces pratiques peuvent être justifiées par l'application de l'article 8 ci-dessus. Il communique son avis au Premier Ministre ou aux organismes dont émane la demande d'avis, et recommande, le cas échéant, les mesures, conditions ou injonctions prévues par la présente section.

Il ne peut être saisi de faits remontant à plus de cinq (5) ans s'il n'a été fait aucun acte tendant à leur recherche, leur constatation ou leur sanction.

Article 26

Le Conseil de la concurrence peut, lorsque les faits lui paraissent de nature à justifier l'application de l'article 67 ci-dessous, recommander au Premier Ministre de saisir le Procureur du Roi près le tribunal de première instance compétent aux fins de poursuites conformément audit article.

Cette transmission interrompt la prescription de l'action publique.

Article 27

Le Conseil de la concurrence peut déclarer, par décision motivée, sa saisine irrecevable s'il estime que les faits invoqués n'entrent pas dans le champ de sa compétence ou ne sont pas appuyés d'éléments suffisamment probants.

Le Conseil de la concurrence peut décider, après que l'auteur de la saisine ait été mis en mesure de consulter le dossier et de faire valoir ses observations, qu'il n'y a pas lieu de poursuivre la procédure.

Cette décision du Conseil est transmise à l'auteur de la saisine et aux personnes dont les agissements ont été examinés au regard des articles 6 et 7 ci-dessus.

Article 28

Le président du Conseil de la concurrence désigne un rapporteur pour l'examen de chaque affaire.

Article 29

Le président du Conseil de la concurrence peut demander à l'administration de procéder à toutes enquêtes qu'il juge utiles.

Le président du Conseil peut également, chaque fois que les besoins de l'enquête l'exigent, faire appel à toute expertise nécessitant des compétences techniques particulières.

Article 30

Le rapporteur procède à l'examen de l'affaire.

Il peut procéder à l'audition des parties en cause.

Le rapport du rapporteur doit contenir l'exposé des faits et, le cas échéant, les infractions relevées, ainsi que les éléments d'information et les documents ou leurs extraits, sur lesquels il se fonde.

Le rapport et les documents mentionnés à l'alinéa ci-dessus sont communiqués aux parties en cause par lettre recommandée avec accusé de réception aux fins de présenter leurs observations.

Article 31

Les parties en cause doivent présenter par écrit leurs observations sur le rapport dans un délai mois courant à compter de la date de la réception de la lettre recommandée visée à l'article précédent.

En outre, le Conseil de la concurrence peut les inviter à présenter des observations orales et leur demander de répondre aux questions qui leur seraient posées.

Article 32

Le Premier Ministre peut, par décision motivée et sur recommandation du Conseil de la concurrence, après que celui-ci ait entendu les parties en cause, ordonner des mesures conservatoires qui ne peuvent être demandées qu'accessoirement à une demande d'avis préalable.

La demande de mesures conservatoires peut être présentée à tout moment de la procédure et doit être motivée.

Ces mesures peuvent comporter la suspension de la pratique concernée ainsi qu'une injonction aux parties de revenir à l'état antérieur. Elles doivent rester strictement limitées à ce qui est nécessaire pour faire face à l'urgence.

Ces mesures ne peuvent intervenir que si la pratique dénoncée porte une atteinte grave et immédiate à l'économie du pays, à celle du secteur intéressé, à l'intérêt des consommateurs ou aux entreprises lésées.

Ces mesures sont notifiées par lettre recommandée avec accusé de réception à l'auteur de la demande et aux personnes contre lesquelles la demande est dirigée.

Article 33

Le président du Conseil de la concurrence communiquer toute pièce mettant en jeu le secret des affaires, sauf dans le cas où la communication, ou la consultation de ces documents, est nécessaire à la procédure ou à l'exercice des droits des parties en cause. Les pièces considérées sont retirées du dossier.

Article 34

Sera punie d'une amende de 10 000 à 100 000 dirhams la divulgation par l'une des parties en cause des informations concernant une autre partie ou un tiers et dont elle n'aura pu avoir connaissance qu'à la suite des communications ou consultations auxquelles il aura été procédé.

Article 35

Les parties en cause peuvent assister aux séances du Conseil.

Elles peuvent demander à être entendues par le Conseil de la concurrence.

Le Conseil de la concurrence peut entendre toute personne dont l'audition lui paraît susceptible de contribuer à son information.

Le rapporteur général peut présenter des observations orales.

Le rapporteur général et les rapporteurs assistent aux séances du Conseil sans voix délibérative.

Article 36

Le Premier Ministre peut, par décision motivée et sur recommandation du Conseil de la concurrence, ordonner aux intéressés de mettre fin aux pratiques anticoncurrentielles dans un délai déterminé ou imposer des conditions particulières.

Il peut saisir le Procureur du Roi près le tribunal de première instance compétent aux fins de poursuite conformément aux dispositions de l'article 70 ci-dessous.

Article 37

Si les injonctions ou les conditions prévues à l'alinéa 1 de l'article 36 ci-dessus ou si les mesures conservatoires prévues à l'article 32 ci-dessus ne sont pas respectées, le Premier Ministre peut, par décision motivée et sur recommandation du Conseil de la concurrence, saisir le Procureur du Roi près le tribunal de première instance compétent aux fins de poursuite conformément aux dispositions de l'article 70 ci-dessous.

Article 38

Les juridictions communiquer au Conseil de la concurrence, sur sa demande, copie des procès-verbaux, des rapports d'enquête ou de tout document ayant un lien direct avec les faits dont le Conseil de la concurrence est saisi.

Le Conseil de la concurrence peut être consulté par les juridictions sur les pratiques anticoncurrentielles définies aux articles 6 et 7 ci-dessus et relevées dans les affaires dont elles sont saisies. Il ne peut donner un avis qu'après une procédure contradictoire. Toutefois, s'il dispose d'informations déjà recueillies au cours d'une procédure antérieure, il peut émettre son avis sans avoir à mettre en œuvre la procédure prévue à la présente section.

Les avis émis en application du présent article ne peuvent être publiés, le cas échéant, qu'après qu'une décision ne devienne définitive.

Article 39

La prescription de l'action publique est interrompue dans les conditions de droit commun, y compris par la rédaction des procès-verbaux visés à l'article 62.

Article 40

Les recours contre les décisions du Premier Ministre prises en application de la présente section, sauf celles visées aux articles 26 (1er alinéa), 36 (2ème alinéa) et 37, sont portés devant la juridiction administrative compétente.

Article 41

Le Premier Ministre peut en outre, sur recommandation du Conseil de la concurrence, ordonner que les décisions prises en application de la présente section soient publiées intégralement ou par extraits dans un ou plusieurs journaux habilités à publier les annonces légales, ou publications qu'il désigne, et affichées dans les lieux qu'il indique :

- Aux frais de la partie qui a contrevenu aux dispositions des articles 6 ou 7 ci-dessus;
- Aux frais du demandeur des mesures s'il s'agit de mesures conservatoires.

Le Premier Ministre peut également prescrire, sur recommandation du Conseil de la concurrence, l'insertion du texte intégral de sa décision dans le rapport de gestion établi par les gérants, le conseil d'administration ou le directoire sur les opérations de l'exercice.

Section 2

De la procédure relative aux opérations de concentration économique

Article 42

Lorsque le Premier Ministre saisit le Conseil de la concurrence d'un projet de concentration ou d'une opération de concentration, il en avise les entreprises parties à l'acte.

Le Conseil de la concurrence apprécie si le projet de concentration ou la concentration apporte au progrès économique une contribution suffisante pour compenser les atteintes

à la concurrence. Le Conseil tient compte de la compétitivité des entreprises en cause au regard de la concurrence internationale.

Article 43

Le Premier Ministre peut, par décision motivée, et à la suite de l'avis du Conseil de la concurrence, enjoindre aux entreprises, dans un délai déterminé :

- Soit de ne pas donner suite au projet de concentration ou de rétablir la situation de droit antérieure;
- Soit de modifier ou compléter l'opération ou de prendre toute mesure propre à assurer ou à établir une concurrence suffisante.

La réalisation de l'opération peut également être subordonnée à l'observation de prescriptions de nature à apporter au progrès économique et social une contribution suffisante pour compenser les atteintes à la concurrence.

Ces injonctions et prescriptions s'imposent quelles que soient les stipulations des parties.

Article 44

Les décisions prises en application de l'article 43 précédent ne peuvent intervenir qu'après que les parties intéressées aient été mises en mesure de présenter leurs observations en réponse au rapport établi par le rapporteur et ce, dans un délai d'un mois courant à compter de la réception dudit rapport.

Article 45

Le Conseil de la concurrence peut, en cas d'exploitation abusive d'une position dominante, proposer au Premier Ministre d'enjoindre par décision motivée, à l'entreprise ou au groupe d'entreprises en cause, de modifier, de compléter ou de résilier, dans un délai déterminé, tous accords et tous actes par lesquels s'est réalisée la concentration de la puissance économique qui a permis les abus même si ces actes ont fait l'objet de la procédure prévue à la présente section.

Article 46

La procédure applicable aux décisions du Premier est celle prévue à l'article 30 ci-dessus et aux articles 33 à 35 ci-dessus.

Les décisions du Premier Ministre sont motivées et publiées au *"Bulletin officiel"*, avec l'avis du Conseil de la concurrence.

À défaut de la notification prévue à l'article 12 ci-dessus et en cas de non-respect des engagements prévus au premier alinéa de l'article 12 ci-dessus ainsi que du non-respect des décisions ci-dessus, le Premier Ministre peut, après consultation du Conseil de la concurrence, saisir le Procureur du Roi près le tribunal de première instance compétent aux fins de poursuites conformément à l'article 70 ci-dessous.

Les recours contre les décisions du Premier Ministre prises en application de la présente section, sauf celles de saisir le Procureur du Roi prévues à l'alinéa précédent, sont portés devant la juridiction administrative compétente.

TITRE VI

Des pratiques restrictives de la concurrence

Chapitre premier

De la protection et de l'information des consommateurs

Article 47

Tout vendeur de produit ou tout prestataire de services doit par voie de marquage, d'étiquetage, d'affichage ou par tout autre procédé approprié, informer le consommateur sur les prix et les conditions particulières de la vente ou de la réalisation de la prestation.

Les modalités d'information du consommateur sont fixées par voie réglementaire.

Article 48

Le vendeur de produits ou le prestataire de services est tenu de délivrer une facture, un ticket de caisse ou tout autre document en tenant lieu à tout consommateur qui en fait la demande.

Toutefois dans certains secteurs dont la liste est fixée par voie réglementaire, la délivrance d'une facture pourra être rendue obligatoire.

Les dispositions des alinéas 3 à 7 de l'article 51 ci-dessous sont applicables aux factures prévues par le présent article.

Article 49

Il est interdit de :

- Refuser à un consommateur la vente d'un produit ou la prestation d'un service, sauf motif légitime;
- Subordonner la vente d'un produit à l'achat d'une quantité imposée ou à l'achat concomitant d'un autre produit ou d'un autre service;
- Subordonner la prestation d'un service à celle d'un autre service ou à l'achat d'un produit.

Article 50

Il est interdit de vendre ou d'offrir à la vente des produits ou des biens, d'assurer ou d'offrir une prestation de services aux consommateurs donnant droit à titre gratuit, immédiatement ou à terme, à une prime consistant en produits, biens ou services sauf s'ils sont identiques à ceux qui font l'objet de la vente ou de la prestation.

Cette disposition ne s'applique pas aux menus objets ou services de faible valeur ni aux échantillons. La valeur de ces objets, services ou échantillons, est déterminée par voie réglementaire.

Ne sont pas considérés comme primes au sens du premier alinéa ci-dessus :

- Le conditionnement habituel du produit, les biens, produits ou prestations de services qui sont indispensables à l'utilisation normale du produit, du bien ou du service faisant l'objet de la vente;
- Les prestations de service après-vente et les facilités de stationnement offertes par les commerçants à leurs clients;
- Les prestations de services attribuées gratuitement si ces prestations ne font pas ordinairement l'objet d'un contrat à titre onéreux et sont dépourvues de valeur marchande.

Chapitre II

De la transparence dans les relations commerciales entre professionnels

Article 51

Tout achat de biens ou produits ou toute prestation de services entre professionnels doit faire l'objet d'une facturation.

Le vendeur est tenu de délivrer la facture dès la réalisation de la vente ou de la prestation du service. L'acheteur doit réclamer la facture.

La facture doit être rédigée en double exemplaire prénumérotée et tirée d'une série continue ou éditée par un système informatique selon une série continue.

Le vendeur et l'acheteur doivent en conserver chacun un exemplaire, pendant cinq (5) ans à compter de la date d'établissement de la facture, et ce sans préjudice des dispositions prévues par la législation fiscale en vigueur.

Sous réserve de l'application de toutes autres dispositions législatives ou réglementaires en vigueur, notamment les numéros d'immatriculation au registre du commerce, montant du capital social et adresse du siège social, numéro d'identification fiscale, numéro d'article à l'impôt des patentes, la facture doit mentionner :

- Le nom, la dénomination ou raison sociale des parties ainsi que leur adresse;
- La date de la vente du produit ou de la prestation de services et, le cas échéant, la date de livraison;
- Les quantités et la dénomination précise des produits ou services;
- Les prix unitaires hors taxes ou toutes taxes comprises des biens ou produits vendus et des services rendus;
- Les réductions accordées et leur montant chiffrable lors de la vente ou de la prestation de services, quelle que soit leur date de règlement;
- Le montant total toutes taxes comprises;
- Les modalités de paiement.

Il est interdit de délivrer des factures comportant de faux renseignements quant aux prix, quantité et qualité des produits ou marchandises vendus ou des services rendus.

Le refus de délivrer facture peut être constaté par tout moyen, notamment par une mise en demeure sous forme de lettre recommandée ou par procès-verbal dressé par tout agent de la force publique.

Article 52

Tout producteur, prestataire de services, importateur ou grossiste est tenu de communiquer à tout acheteur de produit ou demandeur de prestation de services pour une activité professionnelle qui en fait la demande, son barème de prix et ses conditions de vente. Celles-ci comprennent les conditions de règlement et, le cas échéant, les réductions accordées quelle que soit leur date de règlement.

Cette communication s'effectue par tout moyen conforme aux usages de la profession.

Article 53

Est interdit le fait par toute personne d'imposer, directement ou indirectement, un caractère minimal au prix de revente d'un produit ou d'un bien, au prix d'une prestation de services ou à une marge commerciale.

Article 54

Il est interdit à tout producteur, importateur, grossiste ou prestataire de services :

1) De pratiquer, à l'égard d'un partenaire économique ou d'obtenir de lui des prix, des délais de paiement, des conditions de vente ou des modalités de vente ou d'achat discriminatoires et non justifiés par des contreparties réelles en créant de ce fait, pour ce partenaire, un désavantage ou un avantage dans la concurrence;

2) De refuser de satisfaire aux demandes des acheteurs de produits ou aux demandes de prestations de services, pour une activité professionnelle, lorsque ces demandes ne présentent aucun caractère anormal et qu'elles sont faites de bonne foi;

3) De subordonner la vente d'un produit où la prestation d'un service pour une activité professionnelle, soit à l'achat concomitant d'autres produits, soit à l'achat d'une quantité imposée, soit à la prestation d'un autre service;

4) Dans les villes où existent des marchés de gros et des halles aux poissons :

a) De ravitailler les grossistes, semi-grossistes ou détaillants en fruits, légumes ou poissons destinés à la consommation et vendus en l'état et qui ne seraient pas passés par le carreau de ces marchés et de ces halles;
b) De détenir, de mettre à la vente ou de vendre des fruits, légumes ou poissons destinés à la consommation et vendus en l'état et qui ne seraient pas passés par le carreau de ces marchés et de ces halles.

Exception est faite pour les denrées susvisées importées ou destinées à l'exportation ou à l'industrie.

Chapitre III

Du stockage clandestin

Article 55

Sont considérées comme stockage clandestin et sont interdites :

1) La détention par des commerçants, industriels, artisans ou agriculteurs de stocks de marchandises ou de produits qui sont dissimulés par eux à des fins spéculatives et en quelque local que ce soit;

2) La détention en vue de la vente d'un stock de marchandises ou de produits quelconques, par des personnes non inscrites au registre du commerce ou n'ayant pas la qualité d'artisan aux termes du dahir No 1-63-194 du 5 safar 1383 (28 juin 1963) formant statut des chambres d'artisanat ou qui ne peuvent justifier de la qualité de producteur agricole;

3) La détention, en vue de la vente, par des personnes inscrites au registre du commerce ou ayant la qualité d'artisan aux termes du dahir précité, d'un stock de marchandises ou de produits étrangers à l'objet de leur industrie ou commerce ou activité tel que cet objet résulte de leur patente ou de leur inscription sur les listes électorales des chambres d'artisanat;

4) La détention, en vue de la vente, par des producteurs agricoles d'un stock de marchandises ou de produits étrangers à leur exploitation.

Sera considéré comme détenu en vue de la vente pour l'application des paragraphes 2, 3 et 4 ci-dessus, tout stock de marchandises ou de produits non justifié par les besoins de l'activité professionnelle du détenteur et dont l'importance excède manifestement les besoins de l'approvisionnement familial appréciés selon les usages locaux.

TITRE VII

Dispositions particulières relatives aux produits ou services dont le prix est réglementé

Article 56

Les prix peuvent être fixés soit en valeur absolue soit par application d'une marge bénéficiaire applicable à un produit ou service au stade considéré de la commercialisation, soit par tout autre moyen.

Quand les marges bénéficiaires sont exprimées en valeur absolue, elles s'ajoutent au prix de revient. Lorsqu'elles sont exprimées en pourcentage elles s'appliquent, sauf dispositions contraires, au prix de vente.

Les modalités d'application des dispositions du présent article sont fixées par voie réglementaire.

Article 57

Peut être rendue obligatoire et soumise à déclaration la détention, à quelque titre que ce soit, des marchandises ou produits dont les prix sont réglementés en application de la présente loi, quelles que soient leur origine, provenance et destination.

Ces marchandises et produits peuvent bénéficier de ristournes effectuées par la Caisse de compensation ou être soumis à des prélèvements compensatoires versés à cette même Caisse.

Les modalités d'application des dispositions du présent article sont fixées par l'administration.

Article 58

Les conditions de détention des marchandises ou produits dont les prix sont réglementés en application de la présente loi ainsi que, le cas échéant, le mode de présentation pour leur exposition ou leur mise en vente peuvent être prescrites par l'administration.

Article 59

Est interdite et est considérée comme stockage clandestin la détention de stocks de marchandises ou de produits qui n'ont pas été déclarés alors qu'ils auraient dû l'être en application de l'article 57 ci-dessus.

Article 60

Constituent des majorations illicites de prix pour les marchandises, produits ou services dont les prix sont réglementés :

1) Les ventes, offres de vente, propositions de vente, conventions de vente faites ou contractées à un prix supérieur au prix fixé;

2) Les achats, offres d'achat, propositions d'achat, conventions d'achat faits sciemment à un prix supérieur au prix fixé;

3) Le fait, lorsque plusieurs intermédiaires interviennent à un même stade du circuit, de se répartir une marge supérieure à la marge limite autorisée pour ce stade. Dans ce cas, ces intermédiaires sont solidairement responsables.

TITRE VIII

Des enquêtes et sanctions

Chapitre premier

Des enquêtes

Article 61

Pour l'application des dispositions de la présente loi, des fonctionnaires de l'administration habilités spécialement à cet effet et les agents du corps des contrôleurs des prix peuvent procéder aux enquêtes nécessaires.

Ils doivent être assermentés et porteurs d'une carte professionnelle délivrée par l'administration selon les modalités fixées par voie réglementaire.

Les fonctionnaires visés au présent article sont astreints au secret professionnel sous peine des sanctions prévues à l'article 446 du Code pénal.

Article 62

Les enquêtes peuvent donner lieu à l'établissement de procès-verbaux et le cas échéant de rapports d'enquête.

Les procès-verbaux et les rapports d'enquête sur les pratiques visées aux articles 6 et 7 ci-dessus établis par les fonctionnaires et agents précités sont transmis à l'autorité qui les a demandés.

Les procès-verbaux constatant des infractions aux dispositions des titres VI et VII sont transmis au Procureur du Roi compétent.

Article 63

Les procès-verbaux énoncent la nature, la date et le lieu des constatations ou des contrôles effectués. Ils sont signés par le(s) enquêteur(s) et par la ou les personne(s) concernée(s) par les investigations. En cas de refus de celle(s)-ci de signer, mention en est faite au procès-verbal. Un double est laissé aux parties intéressées. Ils font foi jusqu'à preuve du contraire.

Les procès-verbaux sont éventuellement accompagnés d'un ordre de blocage provisoire en cas d'infraction aux dispositions du chapitre III du titre VI et de celles de l'article 59 ci-dessus.

Les marchandises ou les produits bloqués peuvent être laissés à la garde du contrevenant s'il s'agit de denrées périssables à charge par lui d'en verser la valeur estimative fixée au procès-verbal ou être transportées après inventaire et estimation en tout lieu désigné à cet effet.

Les procès-verbaux sont dispensés des formalités et droits de timbre et d'enregistrement. Ils sont rédigés dans les plus courts délais pour les enquêtes visées à l'article 64 ci-après, et sur-le-champ pour celles visées à l'article 65 ci-après.

En ce qui concerne les enquêtes visées à l'article 64 ci-dessous, les procès-verbaux doivent indiquer que le contrevenant a été informé de la date et du lieu de leur rédaction et que sommation lui a été faite d'assister à cette rédaction.

La convocation du contrevenant est consignée dans un carnet à souches ad hoc et comporte mention de sa date de remise, les nom et prénom du contrevenant, l'adresse et la nature de son commerce ainsi que la sommation prévue ci-dessus.

La sommation est considérée comme valablement faite lorsque la convocation a été remise à l'un des employés ou à toute personne chargée à un titre quelconque de la direction ou de l'administration de l'entreprise ou bien, sans remplir des fonctions de direction

ou d'administration, qui participe à un titre quelconque à l'activité de ladite entreprise. Mention de cette remise est portée sur la convocation.

Dans le cas où le contrevenant n'a pu être identifié, les procès-verbaux sont dressés contre inconnu.

Article 64

Les enquêteurs peuvent accéder à tous locaux, terrains ou moyens de transport à usage professionnel, demander la communication des livres, des factures et tous autres documents professionnels et en prendre copie, recueillir sur convocation ou sur place les renseignements et justifications.

L'action des enquêteurs s'exerce également sur les marchandises ou les produits transportés. À cet effet, ils peuvent requérir pour l'accomplissement de leur mission l'ouverture de tous colis et bagages lors de leur expédition ou de leur livraison en présence du transporteur et, soit de l'expéditeur, soit du destinataire ou en présence de leur mandataire.

Les entrepreneurs de transport sont tenus de n'apporter aucun obstacle à ces opérations et de présenter les titres de mouvements, lettres de voiture, récépissés, connaissements et déclarations dont ils sont détenteurs.

Les enquêteurs peuvent demander à l'administration de désigner un expert agréé auprès des tribunaux pour procéder à toute expertise contradictoire nécessaire.

Article 65

Les enquêteurs ne peuvent procéder aux visites en tous lieux ainsi qu'à la saisie de documents, que dans le cadre d'enquêtes demandées par l'administration et sur autorisation motivée du Procureur du Roi dans le ressort duquel sont situés les lieux à visiter. Lorsque ces lieux sont situés dans le ressort de plusieurs juridictions et qu'une action simultanée doit être menée dans chacun de ces lieux, une autorisation unique peut être délivrée par l'un des procureurs du Roi compétents.

Le Procureur du Roi du ressort doit en être avisé.

La visite et la saisie s'effectuent sous l'autorité et le contrôle du Procureur du Roi qui les a autorisées. Il désigne un ou plusieurs officiers de police judiciaire, et au besoin une femme lors des visites des locaux à usage d'habitation, chargés d'assister à ces opérations.

La visite, qui ne peut commencer avant 5 heures ou après 21 heures, est effectuée en présence de l'occupant des lieux ou de son représentant.

Les enquêteurs, l'occupant des lieux ou son représentant ainsi que l'officier de police judiciaire peuvent seuls prendre connaissance des pièces et documents avant leur saisie.

Les inventaires et mises sous scellés des pièces saisies sont réalisés conformément aux dispositions du Code de procédure pénale.

Les originaux du procès-verbal et de l'inventaire sont transmis au Procureur du Roi qui a autorisé la visite. Les pièces et documents qui ne sont plus utiles à la manifestation de la vérité sont restitués à l'occupant des lieux.

Article 66

Les enquêteurs habilités au titre de la présente loi peuvent, sans se voir opposer le secret professionnel, accéder à tout document ou élément d'information détenu par les administrations, les établissements publics et collectivités locales.

Chapitre II

Des sanctions pénales

Article 67

Sera punie d'un emprisonnement de deux (2) mois à ans et d'une amende de 10 000 à 500 000 dirhams ou de l'une de ces deux peines seulement toute personne physique qui, frauduleusement ou en pleine connaissance de cause, aura pris une part personnelle et déterminante dans la conception, l'organisation, la mise en œuvre ou le contrôle de pratiques visées aux articles 6 et 7 ci-dessus.

Article 68

Sera puni d'un emprisonnement de deux (2) mois à deux (2) ans et d'une amende de 10 000 à 500 000 dirhams ou de l'une de ces deux peines seulement le fait, en diffusant, par quelque moyen que ce soit, des informations mensongères ou calomnieuses, en jetant sur le marché des offres destinées à troubler les cours ou des suroffres faites aux prix demandés par les vendeurs, ou en utilisant tout autre moyen frauduleux, d'opérer ou de tenter d'opérer la hausse ou la baisse artificielle du prix de biens ou de services ou d'effets publics ou privés.

Lorsque la hausse ou la baisse artificielle des prix concerne des denrées alimentaires, des grains, farines, substances farineuses, boissons, produits pharmaceutiques, combustibles ou engrais commerciaux, l'emprisonnement est d'un (1) à trois (3) ans et le maximum de l'amende est de 800 000 dirhams.

L'emprisonnement peut être porté à cinq (5) ans et l'amende à 1 000 000 dirhams si la spéculation porte sur des denrées alimentaires ne rentrant pas dans l'exercice habituel de la profession du contrevenant.

Article 69

Dans tous les cas prévus aux articles 67 et 68 ci-dessus, le coupable peut être frappé, indépendamment de l'application de l'article 87 du Code pénal, de l'interdiction d'un ou de plusieurs des droits mentionnés à l'article 40 du même Code.

Article 70

En cas d'infraction aux dispositions des articles 6 et 7 ci-dessus et en cas de non-respect de la notification et des engagements mentionnés à l'alinéa 1 de l'article 12 ci-dessus ainsi que

du non-respect des décisions prévues à l'article 46 ci-dessus, les personnes morales peuvent être reconnues pénalement responsables lorsque les circonstances de l'espèce le justifient, notamment la mauvaise foi des parties en cause ou la gravité de leurs infractions et sans préjudice des sanctions civiles susceptibles d'être appliquées par les tribunaux compétents.

La peine encourue est une amende dont le montant est, pour une entreprise, de 2 % à 5 % du chiffre d'affaires hors taxes réalisé au Maroc au cours du dernier exercice clos. Si le contrevenant n'est pas une entreprise, l'amende est de 200 000 à 2 000 000 dirhams.

Si l'entreprise exploite des secteurs d'activité différents, le chiffre d'affaires à retenir est celui du ou des secteurs où a été commise l'infraction.

Le montant de l'amende doit être déterminé individuellement pour chaque entreprise ou organisme sanctionné en tenant compte de la gravité des faits reprochés et de l'importance des dommages causés à l'économie, ainsi que de la situation financière et de la dimension de l'entreprise ou de l'organisme sanctionné. Cette amende est déterminée en fonction du rôle joué par chaque entreprise ou organisme en cause.

En cas de récidive dans un délai de cinq (5) années, le montant maximum de l'amende applicable peut être porté au double.

Article 71

Les infractions aux dispositions du chapitre premier du titre VI et des textes pris pour leur application sont punies d'une amende de 1 200 à 5 000 dirhams.

Les infractions aux dispositions du chapitre II du titre VI, à celles des articles 57, 58 et 60 ci-dessus et aux textes pris pour leur application sont punies d'une amende de 5 000 à 100 000 dirhams.

Article 72

Sont punies d'une amende de 100 000 à 500 000 dirhams et d'un emprisonnement de 2 mois à 2 ans les infractions aux dispositions des articles 55 et 59 de la présente loi.

La confiscation des marchandises objets de l'infraction et celle des moyens de transport peut également être prononcée.

Article 73

Toute personne responsable de la disparition d'une marchandise ou d'un produit ayant fait l'objet d'un ordre de blocage conformément aux dispositions du deuxième alinéa de l'article 63 est passible d'une amende pouvant atteindre une somme égale à 10 fois la valeur de la marchandise ou du produit disparu.

Article 74

En cas de condamnation pour stockage clandestin, le tribunal peut prononcer à titre temporaire et pour une durée qui ne peut être supérieure à trois mois la fermeture des magasins ou bureaux du condamné.

Il peut aussi interdire au condamné à titre temporaire et pour une durée maximum d'un an, l'exercice de sa profession ou même d'effectuer tout acte de commerce.

Pendant la durée de la fermeture temporaire, le contrevenant continuera à assurer à son personnel les salaires, pourboires, indemnités ou avantages de toute nature dont il bénéficiait à la date de la fermeture du fonds.

Toute infraction aux dispositions d'un jugement prononçant soit la fermeture soit l'interdiction d'exercer la profession ou d'effectuer tout acte de commerce est punie d'une amende de 1 200 à 200 000 dirhams et d'un emprisonnement de un (1) mois à deux (2) ans ou de l'une de ces deux peines seulement.

Article 75

Pendant la durée de l'interdiction prévue à l'article 74 ci-dessus, le condamné ne peut, sous les peines édictées au quatrième alinéa dudit article, être employé à quelque titre que ce soit dans l'établissement qu'il exploitait même s'il l'a vendu, loué ou mis en gérance. Il ne peut non plus être employé dans l'établissement qui serait exploité par son conjoint.

Article 76

Sera punie d'un emprisonnement de deux (2) mois à deux (2) ans et d'une amende de 5 000 à 200 000 dirhams ou de l'une de ces deux peines seulement toute personne qui aura :

- Fait opposition à l'exercice des fonctions des enquêteurs visés à l'article 61 ci-dessus;

- Refusé de communiquer aux enquêteurs visés à l'article 61 ci-dessus des documents ainsi que la dissimulation et la falsification de ces documents.

Toute personne qui donne sciemment de faux renseignements ou fait de fausses déclarations aux organismes compétents ou aux personnes habilitées à constater les infractions ou refuse de leur fournir les explications et justifications demandées est punie des peines prévues au premier alinéa ci-dessus.

Les injures et voies de fait commises à l'égard des personnes visées à l'alinéa précédent sont punies des peines prévues au premier alinéa ci-dessus.

Article 77

Les dispositions de l'article 146 du Code pénal relatives aux circonstances atténuantes ne sont pas applicables aux peines d'amende prononcées en vertu de la présente loi.

Article 78

Dès qu'une condamnation prononcée en application des articles 67 à 70 ci-dessus est devenue irrévocable, un extrait du jugement ou de l'arrêt est adressé sans frais au Premier Ministre pour information.

Article 79

Le tribunal peut ordonner la publication et l'affichage de sa décision ou l'une de ces mesures seulement conformément aux dispositions de l'article 48 du Code pénal, rendue en application du présent chapitre aux frais du condamné sans que la durée de l'affichage ne dépasse un (1) mois et sans que les frais de publication ne dépassent le maximum de l'amende.

Article 80

Les poursuites pénales engagées en application des titres VI et VII de la présente loi sont exercées par voie de citation directe et le tribunal compétent statue à sa plus prochaine audience.

Il est statué d'urgence sur l'appel.

Article 81

Le tribunal peut condamner solidairement les personnes morales au paiement des amendes prononcées contre leurs dirigeants en vertu des dispositions de la présente loi et des textes pris pour son application.

Article 82

Les dispositions pénales de la présente loi ne sont applicables que si les faits qu'elles répriment ne peuvent recevoir une qualification pénale plus grave en vertu des dispositions du Code pénal.

TITRE IX

Dispositions transitoires et diverses

Chapitre premier

Dispositions transitoires

Article 83

Les dispositions de l'article 2 de la présente loi ne s'appliquent pas aux produits et services dont la liste et dont le prix ont été fixés en application de la loi No 008-71 sur la réglementation et le contrôle des prix et les conditions de détention et de vente des produits et marchandises.

La réglementation des prix de ces produits et services peut être maintenue pour une période transitoire de 5 ans courant à compter de la date d'entrée en vigueur de la présente loi.

Demeurent à titre transitoire en vigueur les arrêtés fixant, en application de la loi No 008-71 précitée, les prix des produits et des services visés au premier alinéa ci-dessus jusqu'à leur abrogation conformément à la réglementation en vigueur.

Les conditions de fixation des prix desdits produits et services sont fixées conformément à la réglementation en vigueur.

Article 84

Les infractions aux dispositions des titres VI et VII de la présente loi et des textes pris pour leur application concernant les produits et services visés au premier alinéa de l'article 83 ci-dessus sont constatées par les agents du corps des contrôleurs des prix.

Sont transmis, les procès verbaux des infractions aux dispositions du titre VII de la présente loi et des textes pris pour son application et concernant les produits et services visés au premier alinéa de l'article 83 ci-dessus.

Sont transmis au Procureur du Roi les procès-verbaux des infractions aux dispositions du titre VI de la présente loi et des textes pris pour son application et concernant les produits et services visés à l'alinéa précédent.

Article 85

Les procès-verbaux visés au deuxième alinéa de l'article 84 ci-dessus sont transmis sans délai de la préfecture ou de la province où l'infraction a été constatée.

Article 86

Les infractions aux dispositions du titre VII de la présente loi et des textes pris pour son application peuvent faire l'objet soit de transactions, soit de sanctions administratives, soit de sanctions judiciaires.

Article 87

Seul le droit de transiger. La décision de transaction est prise après avis du chef du service extérieur de l'administration dont relève la marchandise, le produit ou le service concerné, copie de cet avis est jointe au dossier.

Le droit de transiger ne peut plus être exercé dès que le dossier a été transmis au tribunal de première instance compétent.

Article 88

La transaction passée sans réserve éteint l'action de l'administration.

Si des paiements échelonnés ont été admis, des mainlevées partielles de l'ordre de blocage prévu au deuxième alinéa de l'article 63 ci-dessus ne pourront être délivrées qu'au fur et à mesure des paiements libératoires effectués par le contrevenant.

Article 89

La transaction doit être constatée par écrit en autant d'originaux qu'il y a de parties ayant intérêt distinct.

Les actes de transaction sont dispensés de la formalité et des droits d'enregistrement.

Article 90

Les sanctions administratives sont prononcées par arrêté pris après avis du chef du service extérieur de l'administration dont relève la marchandise, le produit ou le service concerné.

Copie de cet avis est jointe au dossier du contrevenant.

Article 91

Les sanctions administratives sont :

1) Un avertissement par lettre recommandée avec accusé de réception;
2) Une amende qui, sans pouvoir excéder 100 000 dirhams, pourra atteindre 20 fois le montant du chiffre d'affaires hebdomadaire moyen du contrevenant, calculé sur la base du dernier exercice, et à laquelle pourra s'ajouter, le cas échéant, le montant des sommes indûment perçues pendant la durée de l'infraction, à savoir la différence entre le prix auquel le produit ou le service aurait dû être vendu et celui auquel il l'a été réellement.

Toutefois en cas d'infraction aux textes pris pour l'application de l'article 58 ci-dessus, l'amende est de 1 000 à 5 000 dirhams.

En cas de stockage clandestin, les sanctions prévues au paragraphe 2 du premier alinéa ci-dessus peuvent, en outre, être accompagnées de la confiscation de tout ou partie du stock.

Article 92

Peut ordonner, si elle le juge opportun, l'affichage ou l'insertion dans les journaux qu'elle désigne, des arrêtés ou des extraits d'arrêté prononçant la confiscation des marchandises ou produits ou infligeant une sanction pécuniaire.

En cas de suppression, de dissimulation, de lacération totale ou partielle des affiches apposées en exécution du présent article, le contrevenant est passible des peines prévues à l'article 325 du Code pénal.

Article 93

Les marchandises ou les produits confisqués sont mis à la disposition de l'administration des domaines qui procède à leur aliénation dans les conditions fixées par les lois et règlements en vigueur.

Article 94

La décision infligeant au contrevenant, à titre d'amende administrative, le paiement des sommes prévues au paragraphe 2 de l'alinéa premier de l'article 91 ci-dessus constitue un titre exécutoire, sauf transaction dans les conditions prévues par la présente loi ou saisine de la commission centrale visée à l'article 96 ci-après.

Article 95

Il n'est pas prévu de sursis en matière de sanctions administratives.

Article 96

Un recours est ouvert, devant une commission centrale, au contrevenant sanctionné par application du paragraphe 2 du premier alinéa de l'article 91 ci-dessus d'une amende comportant paiement, à la fois, d'une somme calculée sur la base de son chiffre d'affaires et des sommes indûment perçues par lui pendant la durée de l'infraction.

La commission centrale précitée est composée de représentants de l'administration et peut s'adjoindre dans chaque affaire, à titre consultatif, toute personne qualifiée.

Le recours fait l'objet d'une requête adressée, par lettre recommandée, au président de la commission et doit contenir un exposé des moyens invoqués par le contrevenant à l'appui de ses conclusions.

Il doit être exercé dans un délai de trente (30) jours à dater de la notification infligeant le paiement d'une amende, telle que définie au premier alinéa du présent article.

La commission centrale entend le contrevenant ou son mandataire et peut soit confirmer, soit modifier le montant de l'amende. Elle rend sa décision dans les trois mois suivant sa saisine.

La décision est notifiée au contrevenant.

Article 97

À défaut de transaction ou de sanction administrative, transmet le dossier au Procureur du Roi compétent pour la suite judiciaire à donner.

Article 98

Dès le prononcé d'une condamnation, avis en est donné par le Procureur du Roi ou le Procureur général du Roi. Dès que la condamnation est irrévocable, un extrait du jugement ou de l'arrêt est adressé sans frais par le Procureur du Roi ou le Procureur général du Roi.

Chapitre II

Dispositions diverses

Article 99

Les associations de consommateurs reconnues d'utilité publique peuvent se constituer partie civile ou obtenir réparation sur la base d'une action civile indépendante du préjudice subi par les consommateurs.

Article 100

Tous les délais prévus par la présente loi sont des délais francs.

Article 101

Sont abrogées les dispositions :

- De la loi No 008-71 du 21 cha'ban 1391 (12 octobre 1971) sur la réglementation et le contrôle des prix et les conditions de détention et de vente des produits et marchandises, telle qu'elle a été modifiée et complétée;
- Des articles 289, 290 et 291 du Code pénal.

Toutefois, demeurent en vigueur les textes pris pour l'application de la loi No 008-71 précitée, dans la mesure où ils ne contredisent pas les dispositions de la présente loi et ce jusqu'à leur abrogation.

Article 102

Les références aux dispositions abrogées par l'article 101, contenues dans les textes législatifs ou réglementaires en vigueur s'appliquent aux dispositions correspondantes édictées par la présente loi.

Article 103

La présente loi entrera en vigueur à compter de la date de sa publication au *Bulletin officiel*.

ANNEX III

UKRAINE

LAW OF UKRAINE

On Limitation of Monopolism and Prevention of Unfair Competition in Entrepreneurial Activities

The present Law shall define the legal grounds for limitation and forestalling of monopolism, for prevention of unfair competition in entrepreneurial activities, and for exercising State control over the observance of the antimonopoly legislation norms.

Section I

General provisions

Article 1. Terms defined

For the purposes of the present Law the following terms shall be used:

product denoting a product of activities (including work, services, and securities) designed for sale;

market of a product (product market) denoting the sphere of circulation of a product having the same consumer value within which monopoly position is defined;

bodies of State power denoting ministries and other central bodies of executive power, bodies of executive power of the Autonomous Republic of the Crimea, State bodies which regulate both activities of economic entities being natural monopolies and securities markets, State bodies of privatization, local bodies of executive power;

bodies of administrative and economic management and control denoting amalgamations of enterprises, other economic entities, public organizations when they fulfil functions of management and control within such powers of bodies of State power or bodies of local self-government that were delegated to them;

competition denoting the contest between entrepreneurs when their independent actions limit opportunities of each of them to influence general conditions of product sale on the market and stimulate production of such products that are needed by the consumer;

monopoly position denoting such a dominant position of an economic entity that enables it to restrict competition on the market of a particular product independently or jointly with other economic entities. Position of an economic entity shall be considered as a monopoly one if its share in the market of a particular product exceeds 35 per cent. Position of an economic entity whose share in the market of a particular product is less than 35 per cent may be defined as a monopoly one by a decision taken by the Antimonopoly Committee of Ukraine;

monopoly price denoting such a price that is set by an economic entity occupying monopoly position on the market and that results in restriction of competition or in violation of the consumer rights;

monopoly activities denoting actions (inactivity) of an economic entity (a group of economic entities) on condition that the economic entity (the group of economic entities) occupies monopoly position on the market with respect to production and sale of products as well as such actions (inactivity) of bodies of State power, bodies of local self-government, and bodies of administrative and economic management and control that are directed towards prevention, essential restriction or removal of competition;

monopoly formation denoting such an enterprise, amalgamation or an economic society and other formation that occupies monopoly position on the market;

economic entity denoting such a legal person, irrespective of its organization, legal, and ownership forms, or such a natural person that is engaged in production, sale, and purchase of products or in other economic activities; it also denotes any legal or natural person which exercises control over economic entities, a group of economic entities if one or several of them exercise control over others. Bodies of State power, bodies of local self-government, and bodies of administrative and economic management and control with respect to their activities associated with production, sale, purchase of products or with respect to other economic activities shall be considered as economic entities;

information denoting knowledge in any form, of any type, fixed in any media (including correspondence, books, notes, illustrations (maps, diagrams, organigrams, pictures, schemes, etc.), photographs, holographs, cine-films, videofilms, microfilms, sound records, computer system databases or complete or partial reproduction of their elements) explanations given by persons and any other publicly announced or documented knowledge;

control denoting a decisive influence exerted by a legal or natural person on economic activities of an economic entity, in particular owing to: the right to own or use all the assets or their considerable part; the right ensuring a decisive influence on complement formation of, voting results, and decisions of managing bodies of an economic entity; conclusions of such agreements and contracts that enable to set conditions of economic activities, to give binding instructions or to perform functions of a managing body of an economic entity; occupation of the position of head, deputy head of a supervisory board, board of directors or of other supervisory or executive body of an economic entity by the person occupying one or several of the mentioned positions in other economic entities; coincidence of more than half of members of a supervisory board, board of directors, other supervisory or executive bodies of an economic entity.

Article 2. Application of the present Law

1. The present Law shall be applied to the relations in which economic entities take part.

2. The present Law shall not affect the relations resulting from the rights to intellectual property objects with the exception of the cases provided for by the present Law.

3. Laws of Ukraine, in comparison with the present Law, may provide for peculiarities in regulating relations associated with monopoly activities and unfair competition on financial and securities markets.

4. If an international treaty with respect to whose binding nature the Supreme Rada of Ukraine (Parliament) gave its consent fixes rules different from those contained in the present Law the rules of the international treaty shall be applied.

Section II

Abuse of monopoly position on the market. Unlawful agreements. Discrimination against economic entities

Article 3. Definition of monopoly position

Monopoly position of economic entities on the market with respect to all kinds of capitalized products (industrial and technical production) and with respect to capitals (finances, securities, etc.) being in circulation shall be defined within the territory of Ukraine.

Monopoly position of economic entities on the market with respect to all kinds of consumer products and with respect to all kinds of work and services shall be defined by the Antimonopoly Committee of Ukraine, and its territorial offices within an administrative region or an autonomy (district, settlement).

Article 4. Abuse of monopoly position on the market

It shall be considered to constitute abuses of monopoly position:

imposition of such contract terms that create a disadvantage for contractors or imposition of such additional terms that have nothing in common with the subject of a contract, including imposition of a needless product on a contractor;

limitation or stoppage of production or products and their removal from circulation, which resulted or can result in creation or maintenance of deficit on the market or in setting monopoly prices;

partial or complete refusal to sell or purchase a product in the absence of alternative purchase or sales sources, which resulted or can result in creation or maintenance of deficit on the market or in setting monopoly prices;

other actions which resulted or can result in creation of barriers to entry into (withdrawal from) the market with respect to other economic entities;

setting of such discriminatory prices (tariffs, rates) for one's own products that restrict rights of certain consumers;

setting of monopoly high prices (tariffs, rates) for one's own products, which resulted or can result in violation of the rights of consumers;

setting of monopoly low prices (tariffs, rates) for one's own products, which resulted or can result in restriction of competition.

Article 5. Anticompetitive concerted actions

Anticompetitive concerted actions shall be considered to constitute such concerted actions (agreements) that resulted or can result in:

setting (maintenance) of monopoly prices (tariffs), rebates, extra charges (additional payments), increases of prices;

distribution of markets on the principle of territory, assortment of products, volume of production sale or product purchase, or according to the circle of consumers, or according to other indications, which resulted or can result in their monopolization;

removal of sellers, buyers, and other economic entities from the market or restriction of their access into it.

Article 6. Discrimination against economic entities practised by bodies of State power, bodies of local self-government, and bodies of administrative and economic management and control

1. It shall be considered to constitute discrimination against economic entities practised by bodies of State power, bodies of local self-government, and bodies of administrative and economic management and control:

prohibition against establishment of new enterprises or other organization forms of entrepreneurship in any sphere of activities as well as putting restrictions on being engaged in some activities, on production of particular kinds of products, which resulted or can result in restriction of competition;

compulsion of economic entities to join associations, concerns, interbranch, regional, and other amalgamations of enterprises, to practise a priority conclusion of contracts, and to provide a primary supply to a particular circle of consumers;

making decisions about centralized distribution of products, which resulted or can result in monopoly position on the market;

establishment of prohibition against sale of products from one region of the republic into another one;

giving particular economic entities such as tax and other privileges that place them in a privileged position with respect to other economic entities, which resulted or can result in monopolization of the market of a particular product;

restriction of the rights of economic entities to purchase and sell products;

establishment of prohibitions or limitations with respect to particular economic entities or groups of economic entities.

2. Conclusion of agreements between bodies of State power, bodies of local self-government, bodies of administrative and economic management and control, conclusion of agreements between these bodies and economic entities as well as their giving natural or legal persons powers to perform the actions provided for by item 1 of the present article shall also be considered to constitute discrimination against economic entities.

3. Exemptions from the provisions of the present article may be established by legislative acts of Ukraine for the purpose of ensuring national security, defence, public interests.

Section III

Unfair competition

Article 7. Unfair competition

Legal grounds for protection against unfair competition shall be defined by the Law of Ukraine on Protection against Unfair Competition.

Section IV

State control over the observance of the antimonopoly legislation

Article 8. State policy in the sphere of limitation of monopolism in entrepreneurial activities

1. State policy in the sphere of limitation of monopolism in entrepreneurial activities, taking such measures concerning demonopolization of the economy, financial, material, technical, information, consultative, and other support of economic entities that favour development of competition shall be carried out by such bodies of State power, bodies of local self-government, bodies of administrative and economic management and control that are empowered to carry it out.

2. Demonopolization of the economy and development of competition in Ukraine shall be provided in accordance with the special programme elaborated by the Cabinet of Ministers of Ukraine and is approved by the Supreme Rada (Parliament) of Ukraine.

3. State control over the observance of the antimonopoly legislation, protection of the interests of economic entities and consumers against violations of the antimonopoly legislation including protection against abuses of monopoly position and against unfair competition shall be exercised by the Antimonopoly Committee of Ukraine in accordance with its competence.

Article 9. Antimonopoly Committee of Ukraine

The structure, competence, organization of activities, and accountability of the Antimonopoly Committee of Ukraine shall be defined by the Law of Ukraine on the Antimonopoly Committee of Ukraine.

Articles 10, 11, 12 are abrogated.

Article 13. Access to information

Economic entities, bodies of State power, bodies of local self-government, bodies of administrative and economic management and control as well as their officials - by order of State

commissioners, heads of territorial offices of the Antimonopoly Committee of Ukraine - shall be obliged to provide documents, written and oral explanations, other information, including restricted information, necessary to the Antimonopoly Committee of Ukraine and its territorial offices for carrying out the tasks provided for by legislation.

Article 14. Control over establishment, reorganization (merger, annexation), liquidation of economic entities

To prevent monopoly position of particular economic entities on the market (monopolization of product markets), establishment, reorganization (merger, annexation), liquidation of economic entities, establishment of associations, concerns, interbranch, regional, and other amalgamations of enterprises, transformation of bodies of State power, bodies of local self-government, bodies of administrative and economic management and control into the mentioned amalgamations, entry of one or several economic entities into amalgamations in the cases provided for by legislation shall be carried out on condition that consent of the Antimonopoly Committee of Ukraine is received.

Article 15. Control over acquisition or lease of property

Purchase, acquisition - by other means, - receipt - for the purpose of management (use), - of the shares (stocks) as well as assets (property) in the form of integrated complexes of property of economic entities or of their structural subdivisions, lease of integrated complexes of property of economic entities or of their structural subdivisions shall be carried out by economic entities in the cases provided for by legislation on condition that consent of the Antimonopoly Committee of Ukraine is received.

Article 16. Compulsory split-up of monopoly formations

1. In the cases when economic entities abuse their monopoly position on the market, the Antimonopoly Committee of Ukraine and its territorial offices shall have the right to adopt a decision about compulsory split-up of monopoly formations.

2. Compulsory split-up shall not be applied in the following cases:

if it is found impossible to make organizational or territorial separation of enterprises, structural subdivisions or structural units;

if there is a close technological connection of enterprises, structural subdivisions or structural units (the share of the inner turnover in the gross output of the enterprise (amalgamation, etc.) accounts for less than 30 per cent).

3. A decision of the Antimonopoly Committee of Ukraine (its territorial office) on a compulsory split-up of enterprises (amalgamations, etc.) shall be fulfilled within a fixed period which cannot be less than six months.

Reorganization of a monopoly formation, subject to a compulsory split-up, shall be carried out at the discretion of the monopoly formation on condition that its monopoly position on the market is eliminated.

Articles 17 and 18 are abrogated.

Section V

Responsibility for violations of the antimonopoly legislation

Article 19. Imposition of fines on economic entities being legal person

Fines on economic entities being legal persons shall be imposed by the Antimonopoly Committee of Ukraine for:

commitment of the actions provided for by articles 4-6 of the present Law, evasion of fulfilment or a tardy fulfilment of decisions of the Antimonopoly Committee of Ukraine (its territorial office) on termination of violations of the antimonopoly legislation, renewal of the initial state of affairs or change of agreements contradicting the present Law - to the amount of 5 per cent of the receipts from sale of production (products, work, services) got by the economic entity in the last account year preceding the year in which the fine is imposed;

establishment, reorganization (merger, annexation), liquidation of economic entities (including an economic society, association, concern or other amalgamation of enterprises); entry of one or several economic entities into an amalgamation; purchase, acquisition - by other means, - receipt - for the purpose of management (use), - of shares (stocks) as well as assets (property) in the form of integrated complexes of property of economic entities or of their structural subdivisions as well as lease of integrated complexes of property of economic entities or of their structural subdivisions without consent of the Antimonopoly Committee of Ukraine, administrative boards, State commissioners, and territorial offices of the Antimonopoly Committee of Ukraine if legislation provides for the necessity to receive that sort of consent - to the amount of 5 per cent of the receipts from sale of production (products, work, services) got by the economic entity in the last account year preceding the year in which the fine is imposed; lack of submission, a tardy submission of deliberately falsified information to the Antimonopoly Committee of Ukraine (its territorial office) - to the amount of 0.5 per cent of the receipts from sale of production (products, work, services) got by the economic entity in the last account year preceding the year in which the fines is imposed.

If it is impossible to calculate receipts of the economic entity or the receipts are absent, the fines mentioned in paragraph 2 and 3 of Part 1 of the present article shall be imposed to the amount of 10,000 tax-free minimum private citizen incomes, and the fines mentioned in paragraph 4 of Part 1 - to the amount of 200 tax-free minimum private citizen incomes.

If the economic entity worked less than a year, fines shall be calculated on the basis of the receipts got by the economic entity in the period preceding the violation.

Decisions about imposition of fines exceeding 1,000 tax-free minimum private citizen incomes shall be taken exclusively by the Antimonopoly Committee of Ukraine and administrative boards at their sittings.

Fifty per cent of fines shall be transferred to the State budget and 50 per cent of fines - to the special extrabudgetary fund established for the purpose of developing and protecting competition.

Article 20. Administrative responsibility of officials and private citizens engaged in entrepreneurial activities

Officials of bodies of State power, bodies of local self-government, bodies of administrative and economic management and control, enterprises, institutions as well as private citizens engaged in entrepreneurial activities without creation of a legal person shall bear administrative responsibility according to legislation for:

commitment of the actions provided for by articles 4-6 of the present Law;
lack of submission, a tardy submission or submission of deliberately falsified information to the Antimonopoly Committee of Ukraine and its territorial offices;
evasion of fulfilment or a tardy fulfilment of decisions of the Antimonopoly Committee of Ukraine and its territorial offices.
Fines shall be recovered in accordance with court procedure.

Article 21. Withdrawal of unlawfully got profit

Profit got unlawfully by economic entities as a result of violations of articles 4 and 5 of the present Law shall be recovered by a court of justice or a court of arbitration to the State budget.

Article 22. Reparation of damages

Damages caused by abuse of monopoly position, anticompetitive concerted actions, discrimination against economic entities by bodies of State power, bodies of local self-government, and bodies of administrative and economic management and control shall be repaired in accordance with the procedure provided for by the civil legislation of Ukraine.

Section VI

Examination of cases and applications by the Antimonopoly Committee of Ukraine and appealing against its decisions

Article 23. Examination of cases on violations of the antimonopoly legislation

The Antimonopoly Committee of Ukraine, State commissioners, administrative boards, and territorial offices of the Committee, within their competence, shall examine cases on violations of the antimonopoly legislation and proceeding from the examination results shall take decisions in accordance with the procedure provided for by legislation.

Article 23[1]. Examination of applications for giving consent to establishment, reorganization, and liquidation of economic entities

The Antimonopoly Committee of Ukraine, administrative boards, State commissioners, and territorial offices of the Antimonopoly Committee of Ukraine, within their competence, shall examine applications for giving their consent to establishment, reorganization (merger, annexation), liquidation of economic entities (including an economic society, association, concern or other amalgamation of enterprises); entry of one or several economic entities into an amalgamation; purchase, acquisition - by other means, - receipt - for the purpose of management (use), - of shares (stocks) as well as assets (property) in the form of integrated complexes of property of economic entities or of their structural subdivisions as well as lease of integrated complexes of property of economic entities or of their structural subdivisions and proceedings from the examination results shall take decisions in accordance with the procedure provided for by legislation.

Article 23[2]. Duty on submission of an application for giving consent to establishment, reorganization, and liquidation of economic entities

A duty shall be paid on submission of an application for giving consent to establishment, reorganization (merger, annexation), liquidation of economic entities (including an economic society, association, concern or other amalgamation of enterprises); entry of one or several economic entities into an amalgamation; purchase, acquisition - by other means, - receipt - for the purpose of management (use), - of shares (stocks) as well as assets (property) in the form of integrated complexes of property of economic entities or of their structural subdivisions as well as lease of integrated complexes of property of economic entities or of their structural subdivisions.

Amounts of the mentioned duties shall be distributed at the following ratio: 50 per cent of the amounts of the duties shall be transferred to the State budget and 50 per cent - to the State body for the purpose of reimbursing its expenses incurred as a result of examination of the application, making examination by experts, etc.

The list of duties, their amounts, the periods and procedure of payment shall be defined by the Cabinet of Ministers of Ukraine.

Article 24. Procedure of appealing against decisions of the Antimonopoly Committee of Ukraine

1. In cases of disagreement with decisions of the Antimonopoly Committee of Ukraine and its territorial offices, economic entities, bodies of State power, bodies of local self-government, and bodies of administrative and economic management and control as well as other interested persons shall have the right to apply to a court of justice or a court of arbitration with an application for annulment of or making complete or partial changes in the decisions of the Antimonopoly Committee of Ukraine and its territorial offices.

2. Submission of an application shall not suspend fulfilment of decisions for the period of case examination in a court of justice or a court of arbitration unless the court of justice or the court of arbitration suspended the mentioned acts.

3. Damages caused by unlawful decisions of the Antimonopoly Committee of Ukraine and its territorial offices shall be repaired at the expense of the State budget irrespective of the blame borne by specific officials of the Antimonopoly Committee of Ukraine and its territorial offices.

Article 25. Procedure of fulfilling decisions of the Antimonopoly Committee of Ukraine

1. Decisions of the Antimonopoly Committee of Ukraine and its territorial offices shall be fulfilled within the periods provided for by the decisions.

2. Economic entities upon whom the Antimonopoly Committee of Ukraine imposed fines shall pay them within a 30-day period since the date of receipt of the decision about imposition of the fine. An additional fine equal to 1.5 per cent of the original fine shall be recovered for every day of the delay in payment of the original fine.

3. If an economic entity refuses to pay the original and additional fines, they shall be recovered on the basis of a decision taken by a court of justice or a court of arbitration.

4. The Antimonopoly Committee of Ukraine shall have the right to postpone payment of a fine proceeding from an application submitted by the economic entity upon which the fine was imposed.

L. Kravchuk
President of Ukraine

The city of Kyiv
18 February 1992
No. 2132-XII

The amendments to the present Law were made by:
Decree of the Cabinet of Ministers of Ukraine of 12 May 1993 No. 49-93
Law of Ukraine of 28 February 1995 No. 75/95-BP
Law of Ukraine of 5 July 1995 No. 258/95-BP
Law of Ukraine of 18 November 1997 No. 642/97-BP
Law of Ukraine of 3 March 1998 No. 154/98-BP

LAW OF UKRAINE
ON THE ANTIMONOPOLY COMMITTEE OF UKRAINE

Chapter I

General Provisions

Article 1. Antimonopoly Committee of Ukraine

An Antimonopoly Committee of Ukraine shall be a State body called to secure - according to its competence - State control over antimonopoly legislations observance, protection of entrepreneur and consumer interests against antimonopoly legislation violations.

Article 2. Establishment, subordination, and accountability of the Antimonopoly Committee of Ukraine

The Antimonopoly Committee of Ukraine shall be established by the Supreme Rada of Ukraine* and shall be accountable to it.

The Antimonopoly Committee of Ukraine in its activities shall be subordinate to the Cabinet Ministers of Ukraine.

Article 3. Tasks of the Antimonopoly Committee of Ukraine

The basic tasks of the Antimonopoly Committee of Ukraine shall be the following:
exercising State control over antimonopoly legislation observance;
protection of legitimate interests of entrepreneurs and consumers by means of taking measures associated with prevention and termination of antimonopoly legislation violations, with imposition of penalties for antimonopoly legislation violations, within its competence;
favouring development of fair competition in all the economy spheres.

Article 4. Basic principles of activities of the Antimonopoly Committee of Ukraine

The Antimonopoly Committee of Ukraine shall build its activities according to the following principles:
legitimacy;
publicity;
protection of economic entities rights on the basis of their equality in terms of law and priority of consumer rights.

Article 5. Legislation on the Antimonopoly Committee of Ukraine

The Antimonopoly Committee of Ukraine in its activities shall be guided by Constitution of Ukraine, Law of Ukraine on Limitation of Monopolism and Banning of Unfair Competition in Entrepreneurial Activities, this Law, other acts of legislation, by international treaties and agreements.

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* Supreme Rada of Ukraine is the parliament of Ukraine

If an international treaty in which Ukraine takes part fixes rules other than those contained in this Law the rules of such an international treaty shall be applied.

Chapter II

Structure, competence, and organization of activities of the Antimonopoly Committee of Ukraine

Article 6. System of bodies of the Antimonopoly Committee of Ukraine

The Antimonopoly Committee of Ukraine shall be established and composed of a Chairman and 10 State Commissioners.

A First Deputy Chairman of and three Deputy Chairmen of the Antimonopoly Committee of Ukraine shall be appointed from the State Commissioners.

The Antimonopoly Committee of Ukraine shall establish its territorial offices.

The Antimonopoly Committee of Ukraine and its territorial offices shall constitute the system, headed by the Chairman of the Committee, of bodies of the Antimonopoly Committee of Ukraine.

The Antimonopoly Committee of Ukraine, its territorial offices shall be legal persons having settlement and other accounts in bank branches, seals with the image of the State Emblem and the name of the Committee or its territorial office.

Article 7. Competence of the Antimonopoly Committee of Ukraine

The Antimonopoly Committee of Ukraine according to the entrusted tasks shall:

exercise control over antimonopoly legislation observance during establishment, reorganization, liquidation of economic entities; during transformation of management bodies into amalgamations of entrepreneurs; during procurement of stocks (shares), assets of economic societies and enterprises; during economic activities of entrepreneurs; during realization of powers by central and local bodies of State executive power and by institutions of local and regional self-government with respect to entrepreneurs;
consider cases on antimonopoly legislation violations and shall take decisions within its powers on the basis of consideration results;
address court or arbitration court with actions (applications) in connection with antimonopoly legislation violations, shall send materials on such legislation violations containing crime indications to law protective bodies;
give recommendations on taking measures directed at development of entrepreneurship and competition to State bodies;
take part in elaboration of and shall submit - in accordance with established procedure - draft legislative acts regulating issues of competition development, antimonopoly policy, and the economy demonopolization;

take part in conclusion of international agreements, elaboration and realization of international projects and programmes and shall cooperate with governmental bodies and non-governmental organizations of foreign States on issues laying within the competence of the Antimonopoly Committee of Ukraine;
generalize practice of antimonopoly legislation application, shall work out proposals for its improvement;
work out and organize carrying out measures directed at prevention of antimonopoly legislation violations;
systematically inform the population of Ukraine on activities of the Committee;
take other actions to exercise control over antimonopoly legislation observance.

Article 8. Powers of the Antimonopoly Committee of Ukraine

The Antimonopoly Committee of Ukraine within the competence given to it shall have the right:

to define boundaries of product market and entrepreneurs monopoly position on product market;
give entrepreneurs compulsory regulations on termination of antimonopoly legislation violations, on renewal of the initial State of affairs, on compulsory split-up of monopoly formations, on termination of unlawful agreements between entrepreneurs;
give central and local bodies of State executive power, executive institutions of local and regional self-government compulsory regulations on abolishment or change of unlawful acts adopted by them, on termination of violation and on rupture of agreements which were concluded by them and which contradict antimonopoly legislation; shall prohibit or allow establishment of monopoly formations by central and local bodies of State executive power, by institutions of local and regional self-government, and by economic entities;
place submissions - compulsory for consideration - on annulment of licences, on termination of operations of entrepreneurs in the sphere of external economic activities before respective State bodies if the entrepreneurs violate antimonopoly legislation;
impose fines in cases provided by current legislation;
elaborate and approve normative acts - compulsory for central and local bodies of State executive power, institutions of local and regional self-government, entrepreneurs and their amalgamations - on issues laying within the competence of the Committee;
shall control fulfilment of such normative acts.

Article 9. Chairman of the Antimonopoly Committee of Ukraine

The Chairman of the Antimonopoly Committee of Ukraine shall be appointed by the Supreme Rada of Ukraine at the recommendation of the Chairman of the Supreme Rada of Ukraine.

The Chairman of the Antimonopoly Committee of Ukraine shall be a member of the Cabinet of Ministers of Ukraine.

The office term of the Chairman of the Antimonopoly Committee of Ukraine shall be seven years.

Dismissal (resignation) of the Chairman of the Antimonopoly Committee of Ukraine within his office term may take place only at his will, in case a crime was perpetrated by him, if he committed a flagrant violation of official duties and in connection with impossibility to fulfil his duties through State of health.

The Chairman of the Antimonopoly Committee of Ukraine shall have the right to submit his resignation to the Supreme Rada of Ukraine after having informed the Chairman of the Supreme Rada of Ukraine about his resignation. Resignation of the Chairman of the Committee shall not entail laying down powers by the State Commissioners of the Antimonopoly Committee of Ukraine.

In all cases the issue on dismissal of the Chairman of the Antimonopoly Committee of Ukraine shall be decided by the Supreme Rada of Ukraine at the recommendation of the Chairman of the Supreme Rada of Ukraine.

Resignation of the Cabinet of Ministers of Ukraine shall not entail resignation of the Chairman of the Antimonopoly Committee of Ukraine.

The Chairman of the Antimonopoly Committee of Ukraine shall:

direct activities of the Antimonopoly Committee of Ukraine;
place submissions on appointment and dismissal of the Deputy Chairmen and the State Commissioners of the Antimonopoly Committee of Ukraine before the Supreme Rada of Ukraine;
distribute duties among the Deputy Chairmen and the State Commissioners of the Antimonopoly Committee of Ukraine;
approve structure, staff, and estimates of maintenance costs of the Antimonopoly Committee of Ukraine; shall approve structure of each territorial office, the total number and salary fund of officials of each territorial office;
be the manager of budget allocations for maintenance of the Antimonopoly Committee of Ukraine and for making provision for its activities;
make admission, transference, and dismissal of the staff of the Antimonopoly Committee of Ukraine and its territorial offices according to legislation; shall take encouraging measures and shall impose disciplinary punishments on officials of the Committee and its territorial offices;
establish provisional administrative boards of the Antimonopoly Committee of Ukraine for consideration of cases on antimonopoly legislation violations; shall appoint heads of such boards;
give officials of the Antimonopoly Committee of Ukraine and its territorial offices compulsory orders, regulations, statutes, instructions, and other acts,
represent the Antimonopoly Committee of Ukraine in relations with State bodies, institutions of local and regional self-government, entrepreneurs, citizens, and their amalgamations;
exercise other powers provided by legislation.

The Chairman of the Antimonopoly Committee of Ukraine - by order of the Supreme Rada of Ukraine, at least once a year - shall report on activities of the Committee to the Supreme Rada of Ukraine.

The Chairman of the Antimonopoly Committee of Ukraine shall have the State commissioner status provided by this Law.

Article 10. Deputy Chairmen of the Antimonopoly Committee of Ukraine

The Deputy Chairmen of the Antimonopoly Committee of Ukraine shall fulfil separate functions of the Chairman according to his instructions and shall deputize for the Chairman of the Committee in case of his absence or impossibility to exercise his power.

Article 11. State Commissioners of the Antimonopoly Committee of Ukraine

The State Commissioners of the Antimonopoly Committee of Ukraine shall be appointed by the Supreme Rada of Ukraine at the recommendation of the Chairman of the Antimonopoly Committee of Ukraine for a seven year term.

The State Commissioners shall not be appointed for more than two terms in succession.

A State Commissioner shall be a citizen of Ukraine, whose age is not less than 30 years, who has higher - as a rule legal or economic - education, length of service according to his speciality not less than 5 years for the last 10 years.

The State Commissioners shall be members of the Antimonopoly Committee of Ukraine being the highest collegiate body.

The State Commissioners shall be heads or members of administrative boards, shall fulfil other duties according to instructions of the Chairman of the Antimonopoly Committee of Ukraine.

Article 12. Territorial offices of the Antimonopoly Committee of Ukraine

The territorial offices of the Antimonopoly Committee of Ukraine shall be established in the Republic of Crimea, in the regions, in the cities of Kyiv and Sevastopol to realize tasks placed on the Antimonopoly Committee of Ukraine. The powers of the territorial offices shall be determined by the Committee within its competence. In case of need, territorial offices may be established in other administrative and territorial units.

The territorial offices shall act on the basis of the Statute approved by the Antimonopoly Committee of Ukraine.

Territorial office shall be under the direction of its Head. Head and Deputy Head of Territorial Office shall be appointed by the Chairman of the Antimonopoly Committee of Ukraine. Deputy Head of Territorial Office shall be appointed by the Chairman of the Antimonopoly Committee at the recommendation of Head of Territorial Office.

The Head of Territorial Office of the Antimonopoly Committee of Ukraine in the Republic of Crimea shall be appointed in agreement with the Supreme Rada of the Republic of Crimea.

Head of Territorial Office shall have rights and duties within his competence according to this Law and the Statute mentioned in the second paragraph of this article.

Article 13. Sittings of the Antimonopoly Committee of Ukraine

Sittings of the Antimonopoly Committee of Ukraine shall be a form of work of the Committee being the highest collegiate body.

The Antimonopoly Committee of Ukraine at its sittings shall:

consider and take decisions on cases laying within the jurisdiction of the Committee;
revise decisions of the State Commissioners or the administrative boards of the Committee on the basis of presentation made by the Chairman of the Committee;
approve the most important departmental normative acts the issuance of which lays within the powers of the Antimonopoly Committee of Ukraine; shall consider proposals for changes in current legislation on the basis of generalization results of antimonopoly legislation enforcement;
consider draft reports on activities of the Committee in order to submit them to the Supreme Rada of Ukraine;
consider statutes on consultative bodies of the Committee and their membership;
establish permanent administrative boards;
hear the State Commissioners, the Heads of Territorial Offices and reports of the leaders of the Committee's staff divisions.

The Heads of Territorial Offices may take part in sittings of the Antimonopoly Committee of Ukraine and may have an advisory vote.

Article 14. Administrative boards of the Antimonopoly Committee of Ukraine

Permanent and temporary administrative boards shall be established to consider particular cases on antimonopoly legislation violations. These boards shall include at least three persons and shall be formed from the State Commissioners and the Heads of Territorial Offices of the Antimonopoly Committee of Ukraine.

The administrative boards shall be formed according to branch, regional, and other principles.

The Head of Territorial Office of the Antimonopoly Committee of Ukraine who is a member of an administrative board - when taking decisions - shall have equal rights with the State Commissioners being members of the board.

Article 15. Staff of the Antimonopoly Committee of Ukraine and its territorial offices

Organization, technical, analytical, information, reference, and other of work directed at the maintenance of the Antimonopoly Committee of Ukraine, its territorial office and preparation of materials for consideration of cases on antimonopoly legislation violations shall be carried out by staff respectively of the Antimonopoly Committee of Ukraine or its territorial office.

Statute on structural staff divisions of the Antimonopoly Committee of Ukraine shall be approved by the Chairman of the Committee.

Chapter III

Status of State Commissioner and Head of Territorial Office of the Antimonopoly Committee of Ukraine

Article 16. Rights and duties of State Commissioner and Head of Territorial Office of the Antimonopoly Committee of Ukraine

State Commissioner of the Antimonopoly Committee of Ukraine according to legislation shall have the right:

to enter enterprises, institutions, organizations freely by his identification card and shall have access to documents and other materials necessary for doing check-ups;
to demand oral or written explanations of officials and citizens;
to demand - in connection with realization of his powers - documents and other information necessary for check-up of antimonopoly legislation observance;
to enlist - after agreement with respective central and local bodies of State executive power, institutions of local and regional self-government, enterprises and amalgamations their specialists, deputies of local Radas of people's deputies for doing check-ups and inspections;
to consider cases on antimonopoly legislation violations according to distributed duties and to take decisions based on consideration results within his powers;
to represent the Committee without special warrant in court or arbitration court;
to empower officials of the Committee and its territorial offices to carry out separate powers mentioned in this article.

State Commissioner, Head of Territorial Office of the Antimonopoly Committee of Ukraine shall be responsible for:

exact fulfilment of demands of current legislation of Ukraine, shall be objective and unprejudiced while realizing his powers;
sending submissions on violations of antimonopoly legislation of Ukraine caused by officials to respective State bodies.

State Commissioner, Head of Territorial Office - without agreement of the Antimonopoly Committee of Ukraine - shall not be members of those commissions, committees and other formations which are established by central and local bodies of State executive power and by institutions of local and regional self-government.

Holding more than one office by the State Commissioners and the Heads of Territorial Offices of the Antimonopoly Committee of Ukraine (except for scientific and teaching activities) and their direct or indirect engagement in entrepreneurial activities shall be prohibited.

Article 17. Independence of State Commissioner of the Antimonopoly Committee of Ukraine

State Commissioner of the Antimonopoly Committee of Ukraine is independent in exercising his powers to control the antimonopoly legislation observance and during consideration of cases on its violations.

State Commissioner of the Antimonopoly Committee of Ukraine shall take decisions independently within his powers.

The State Commissioners of the Committee shall take decisions at sittings of the Antimonopoly Committee of Ukraine and administrative boards, have equal rights and be guided only by law.

Article 18. Disciplinary responsibility and dismissal of State Commissioner of the Antimonopoly Committee of Ukraine

State Commissioner of the Antimonopoly Committee of Ukraine may be brought to disciplinary responsibility (except for dismissal) on a universal basis according to procedure fixed by labour legislation of Ukraine.

State Commissioner of the Antimonopoly Committee of Ukraine may be dismissed:
through the state of health preventing him from further work;
at his will;
in the case of a flagrant violation of his official duties or when a crime was perpetrated by him.

Dismissal of the State Commissioners of the Antimonopoly Committee of Ukraine shall be carried out by the Supreme Rada of Ukraine at the recommendation of the Chairman of the Antimonopoly Committee of Ukraine.

State Commissioner of the Antimonopoly Committee of Ukraine shall have the right to resign according to procedure determined by current legislation of Ukraine.

Chapter IV

Legal basis for realization of the powers of the Antimonopoly Committee of Ukraine

Article 19. Guarantee of realization of the powers of the Antimonopoly Committee of Ukraine

The Antimonopoly Committee of Ukraine shall realise its powers, observing Constitution and laws of Ukraine irrespective of central and local bodies of State executive power, institutions

of local and regional self-government, their officials, entrepreneurs and amalgamations of citizens or their bodies.

Interference of central and local bodies of State executive power, institutions of local and regional self-government, their officials, amalgamations of citizens and their representatives with activities of the Antimonopoly Committee of Ukraine and its territorial offices shall be prohibited, except for cases provided by current legislation.

Influence in any form on an official of the Antimonopoly Committee of Ukraine and its territorial offices in order to prevent him from performance of his official duties or to have unlawful decisions taken by him shall entail liability provided by legislation.

Article 20. Relations of the Antimonopoly Committee of Ukraine with central and local bodies of State executive power, institutions of local and regional self-government

To coordinate the activities concerning issues of competition development and the economy demonopolization, the Antimonopoly Committee of Ukraine shall interact with central and local bodies of State executive power, institutions of local and regional self-government.

The territorial offices of the Antimonopoly Committee of Ukraine shall coordinate their activities with local State administrations, institutions of local and regional self-government.

Central and local bodies of State executive power, institutions of local and regional self-government shall be obliged to come to an agreement with the Antimonopoly Committee of Ukraine about their decisions concerning the economy demonopolization, competition development and antimonopoly regulation and to receive the Committee's consent, according to procedure fixed by it, to establishment, reorganization (merger, connection), liquidation of economic entities and societies, establishment of associations, concerns, interbranch, regional and other amalgamations of enterprises, transformation of management bodies into the mentioned amalgamations.

Article 21. Relations of the Antimonopoly Committee of Ukraine with attorney office bodies, the media

The Antimonopoly Committee of Ukraine and its territorial offices shall coordinate their activities concerning issues of revelation, prevention, and termination of antimonopoly legislation violations with attorney office bodies.

The Antimonopoly Committee of Ukraine and its territorial offices shall interact with the media and public organizations concerning their work directed at prevention of antimonopoly legislation violations.

Article 22. Binding nature of demands made by the State Commissioners and the Heads of Territorial Offices of the Antimonopoly Committee of Ukraine

Demands made by the State Commissioners and the Heads of Territorial Offices of the Antimonopoly Committee of Ukraine within their powers shall be met without fail within term fixed by them if current legislation has no other provisions.

Non-observance of lawful demands made by State Commissioner or Head of Territorial Office of the Antimonopoly Committee of Ukraine shall entail liability provided by legislation.

Documents, statistics, and other information necessary for exercising control over antimonopoly legislation observance and for consideration of cases on its violations shall be given at the demand of State Commissioner, Head of Territorial Office of the Antimonopoly Committee of Ukraine free of charge.

State Commissioner, Head of Territorial Office of the Antimonopoly Committee of Ukraine who received information the access to which is restricted by legislation shall use it according to current legislation.

Article 23. Procedural basis for activities of the Antimonopoly Committee of Ukraine

The activities concerning revelation, prevention, and termination of antimonopoly legislation violations shall be carried out by the Antimonopoly Committee of Ukraine, the administrative boards, the State Commissioners, and the Heads of Territorial Offices of the Committee with the observance of procedural basis determined by legislative acts of Ukraine.

The procedure followed by the Antimonopoly Committee of Ukraine and its territorial offices during consideration of cases on antimonopoly legislation violations shall ensure observance of rights and legitimate interests of citizens, entrepreneurs, and the State.

Article 24. Decisions of the Antimonopoly Committee of Ukraine

The Antimonopoly Committee of Ukraine, the State Commissioners, the administrative boards, and the Heads of Territorial Offices of the Committee - within their powers - shall pass compulsory resolutions and shall adopt compulsory regulations.

The Antimonopoly Committee of Ukraine, the administrative boards, the State Commissioners and the Heads of Territorial Offices of the Committee shall pass respective resolutions concerning issues of compulsory split-up of monopoly formations and imposition of fines on entrepreneurs for antimonopoly legislation violations.

The State Commissioners and the Heads of Territorial Offices of the Committee shall draw up Statements of antimonopoly legislation violations according to the Administrative Violations Code of Ukraine in case of antimonopoly legislation violations committed by entrepreneurs, officials of central and local bodies of State executive power, institutions of local and regional self-government, leaders of enterprises (amalgamations, economic societies, etc.).

Information about decisions of the Antimonopoly Committee of Ukraine shall be published in the newspapers Golos Ukrainy (The Voice of Ukraine) and Uriadovy Kurier (The Governmental Courier).

Article 25. Application to court or arbitration court

The Antimonopoly Committee of Ukraine and the State Commissioners of the Committee in order to protect interests of the State, consumers, and entrepreneurs in connection with antimonopoly legislation violations shall submit applications (actions) to court or arbitration court, including applications (actions) on the following issues:

nullification of acts of central local bodies of State executive power, institutions of local and regional self-government and their termination of actions restraining competition in case of their non-observance - in a fixed period - of regulation issued by the Antimonopoly Committee of Ukraine on abolishment of unlawful acts, termination of violations, etc.;

reparation of damages caused by antimonopoly legislation violations;

withdrawal of profit got unlawfully by subjects of entrepreneurial activities as a result of antimonopoly legislation violations;

on other grounds provided by current legislation and shall send Statements of administrative violations to court to have fines imposed on officials according to current legislation.

Chapter V

Other issues of activities of the Antimonopoly Committee of Ukraine

Article 26. Scientific and methodical support of activities of the Antimonopoly Committee of Ukraine

The Antimonopoly Committee of Ukraine in order to prepare recommendations on issues of organization and activities of the Antimonopoly Committee of Ukraine, methodology and methods for exercising control over antimonopoly legislation observance, to work out proposals for its application and improvement and concerning other issues shall establish advisory bodies, conduct technical and economic and scientific researches, enlist experts and consultants, train personnel according to special programmes.

Article 27. Staff number, posts, and salary fund for officials of the Antimonopoly Committee of Ukraine and its territorial offices

The maximum staff number and salary fund for officials of the Antimonopoly Committee of Ukraine shall be determined by the Chairman of the Committee by agreement with the Presidium of the Supreme Rada of Ukraine.

The posts of the Antimonopoly Committee of Ukraine and its territorial offices shall be approved respectively by the Chairman of the Committee and the heads of Territorial Offices within given allocations.

Labour payment terms for the Chairman of the Antimonopoly Committee of Ukraine, the State Commissioners, the Heads of Territorial Offices of the Committee shall be determined by the Presidium of the Supreme Rada of Ukraine.

Article 28. Financing and logistics support of the Antimonopoly Committee of Ukraine

Financing of the Antimonopoly Committee of Ukraine and its territorial offices shall be carried out at the expense of State budget resources. The volume of these allocations shall be fixed by the Supreme Rada of Ukraine annually when State budget is being approved.

Estimate of maintenance expenses for the Antimonopoly Committee of Ukraine and its territorial offices shall be approved respectively by the Chairman of the Antimonopoly Committee of Ukraine and the Heads of Territorial Offices within given allocations.

Local bodies of State executive power, local Radas of people's deputies shall provide the respective territorial offices of the Antimonopoly Committee of Ukraine with necessary office premises on terms of lease within a month after establishment of territorial offices.

The Antimonopoly Committee of Ukraine shall be provided with transport and logistics means at the expense of State budget of Ukraine according to procedure determined by the Cabinet of Ministers of Ukraine.

Article 29. Protection of individual and property rights of officials of the Antimonopoly Committee of Ukraine

Officials of the Antimonopoly Committee of Ukraine while on official duty shall be representatives of State power. Their individual and property rights shall be protected by law equally with those of officials of law protective bodies.

Article 30. Identification card of official of the Antimonopoly Committee of Ukraine

The State Commissioners, the Heads of Territorial Offices, executives of the Antimonopoly Committee of Ukraine and its territorial offices shall have identification card. The Statute of identification card of official of the Antimonopoly Committee shall be approved by the Presidium of the Supreme Rada of Ukraine.

L. Kravchuk
President of Ukraine

The city of Kyiv
26 November 1993
No 3659-XII

LAW OF UKRAINE

ON PROTECTION AGAINST UNFAIR COMPETITION

This Law determines the legal principles of protection of economic entities (entrepreneurs) and consumers against unfair competition.

The Law is aimed at establishing, developing, and ensuring trade and other fair traditions in competition in the course of entrepreneurial activities in market economy conditions.

Chapter I

General Provisions

Article 1. Unfair competition

Unfair Competition shall be understood as any actions performed in the course of competition running counter to the rules, trade and other fair customs in entrepreneurial activities.

In particular, actions stipulated by Chapters 2-4 of this Law shall be qualified as unfair competition.

Terminology used for the purposes of this Law is defined by the Law of Ukraine "On Limitation of Monopolism and Banning of Unfair Competition in Entrepreneurial Activities".

Article 2. Application of the Law

This Law shall apply to relations involving economic entities (entrepreneurs), their associations, bodies of State power, citizens, legal persons and their associations not being economic entities (entrepreneurs) in conjunction with unfair competition, including actions made by them outside Ukraine, provided these actions have negative effect on competition in its territory.

This Law shall not apply to relations involving the said entities if their actions have consequences only outside Ukraine, unless otherwise provided for by an international treaty to which Ukraine is a party.

Article 3. Legislation of Ukraine on protection against unfair competition

Relations in conjunction with protection against unfair competition shall be governed by this Law, the Law of Ukraine "On Limitation of Monopolism and Banning of Unfair Competition in Entrepreneurial Activities", the Law of Ukraine "On the Antimonopoly

Committee of Ukraine", the Law of Ukraine "On Foreign Economic Activities", and by other legislative acts issued as per laws or resolutions of the Supreme Rada of Ukraine.[1]

Chapter II

Unlawful Use of an Economic Entity's (Entrepreneur's) Business Reputation

Article 4. Unlawful use of others' trademarks, advertizing material, and packing

Unauthorized use of others' Christian and company names, trademarks, logos, advertizing material, packing, titles of books, works of art, periodicals, place names of commodities' origin because of which there can be confusion in regard to activities of other economic entities (entrepreneurs) having the priority right to use them shall be qualified as unlawful.

Use of a natural person's name in a company name shall not be qualified as unlawful if the person's name is somehow made distinct, so as to rule out its confusion with the activities of other economic entity (entrepreneur).

Article 5. Unlawful use of goods made by other manufacturers

Unlawful use of goods made by other manufacturers shall be understood as launching into economic circulation under one's name goods belonging to a different manufacturer by changing or lifting that manufacturer's name without permission from an authorized person.

Article 6. Copying of outward appearance of goods

Copying of outward appearance of goods shall be understood as making outwardly exact replicas of goods belonging to other economic entities (entrepreneurs) and launching them into economic circulation without indicating the manufacturer of copies, which can be confusing in regard to the activities of those other economic entities (entrepreneurs).

Copying of outward appearance of goods or their parts shall not be qualified as unlawful if this copying is warranted by their purely functional use.

This article shall not apply to goods being protected as objects of intellectual property.

Article 7. Comparative advertizing

Comparative advertizing shall be understood as advertizing which includes comparison with goods, works, and services or activities of different economic entities (entrepreneurs).

Comparative advertizing shall not be considered unlawful if information contained therein, pertaining to goods, works or services, is corroborated by factual data, being authentic, unbiased, and useful for giving information to consumers.

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[1] Supreme Rada of Ukraine is the Parliament of Ukraine.

Chapter III

Obstructing Other Entities' (Entrepreneurs') Business in the Course of Competition and Gaining Unlawful Advantage in Competition

Article 8. Discrediting an economic entity (entrepreneur)

Discrediting an economic entity (entrepreneur) shall be understood as spreading any form of untruthful, inaccurate or incomplete information about this entity or entrepreneur or their (his) activities which has damaged or could damage their (his) business reputation.

Article 9. Sales and purchase of goods, carrying out works, and rendering services with compulsory assortment

Sales and purchase of goods, carrying out works, and rendering services with compulsory assortment shall be understood as sales and purchase of certain goods, carrying out works, and rendering services on condition of sales and purchase of other goods, carrying out works, and rendering services that are not needed by the consumer or counterpart.

Article 10. Instigating boycott of an economic entity (entrepreneur)

Instigating boycott of economic entities (entrepreneurs) shall be understood as the competitor's actions aimed at instigating a third party – directly or via a go-between – to refuse to make contractual links with the given economic entity (entrepreneur).

Article 11. Instigating suppliers to discriminate against buyers (customers)

Instigating suppliers to discriminate against buyers (customers) shall be understood as the buyer's (customer's) competitor's actions aimed at instigating – directly or via a go-between – the supplier to give the buyer's (customer's) competitor certain unjustifiable advantages over the buyer (customer).

Article 12. Instigating an economic entity (entrepreneur) to abrogate contract with a competitor

Instigating an economic entity (entrepreneur) to abrogate a contract with another economic entity's (entrepreneur's) competitor shall be understood as the instigation motivated by mercenary considerations or made in the interests of a third party, to make the given economic entity (entrepreneur) being a party to a contract to abrogate or mishandle this contract by giving this party to the contract – directly or via a go-between – a material reward, compensation or other advantages.

Article 13. Bribing the supplier's employee

Bribing the supplier's employee shall be understood as the buyer's (customer's) competitor giving or offering this employee – directly or via a go-between – material values, property or non-property benefits in return for that employee's improper fulfilment or non-fulfilment of his duty ensuing from or in conjunction with the contract between the supplier

and the buyer, concerning delivery of goods, carrying out works or rendering services, which has caused or could cause this competitor to receive certain advantages over the buyer (customer).

Any other person being under authority to make decisions on the supplier's behalf on delivery of goods, carrying out works or rendering services, and thus influence the supplier, or being otherwise involved with the supplier shall be placed on the same footing as that supplier's employee.

Article 14. Bribing the buyer's (customer's) employee

Bribing the buyer's (customer's) employee shall be understood as that buyer's (customer's) competitor's offering this employee – directly or via a go-between – material values, property or non-property benefits in return for improper fulfilment of his duties ensuing from or in conjunction with the contract between the supplier and the buyer, concerning delivery of goods, carrying out works or rendering services, which has caused or may cause this competitor to receive advantages over the supplier.

Any other person being under authority to make decisions on the buyer's behalf on purchase of goods, works or services, and thus influence the buyer, or being otherwise involved with the buyer shall be placed on the same footing as that buyer's employee.

Article 15. Gaining unlawful advantage in competition

Gaining unlawful advantage in competition shall be understood as gaining the advantage over another economic entity (entrepreneur) by breaching any of the laws currently in effect and reaffirmed by decisions made by a competent authority.

Chapter IV

Unlawful Collection, Disclosure, and Use of Commercial Secrets

Article 16. Unlawful collection of commercial secrets

Unlawful collection of commercial secrets shall be understood as illegally obtaining data qualified under legislation of Ukraine as confidential commercial information, if by doing so an economic entity (entrepreneur) has been or could be damaged.

Article 17. Disclosure of commercial secrets

Disclosure of commercial secrets shall be understood as disclosure of information qualified under legislation of Ukraine as confidential by the party entrusted with this information to a third party without the knowledge and consent of the authorized party, provided this information was entrusted to that party in due course or was made known in than party's line of duty, and provided this disclosure has damaged or could damage the given economic entity (entrepreneur).

Article 18. Instigation to disclose commercial secrets

Instigation to disclose commercial secrets shall be understood as instigating a person duly entrusted with information qualified under legislation of Ukraine as commercial secrets or made privy to it in the line of duty to disclose this information, provided this disclosure has damaged or could damage the given economic entity (entrepreneur).

Article 19. Unlawful use of commercial secrets

Unlawful use of commercial secrets shall be understood as information used in production or taken into account when planning and doing entrepreneurial activities, which information was illicitly obtained, without the knowledge and consent of the authorized person, and which is qualified as a commercial secret under legislation of Ukraine.

Chapter V

Responsibility for Unfair Competition

Article 20. Types of responsibility

Committing acts of unfair competition as envisaged by this Law shall entail penalties imposed by the Antimonopoly Committee of Ukraine, as well as civil liability and criminal prosecution as provided by legislation.

Article 21. Penalties imposed on economic entities being legal persons and associations thereof

Acts of unfair competition, as envisaged by this Law, committed by economic entities, legal persons, and associations thereof, shall entail penalties imposed by the Antimonopoly Committee of Ukraine and its territorial offices in amounts of up to 3 per cent of the economic entity's proceeds from the sales of goods, works, and services over the fiscal year preceding the year in which this penalty was imposed.

If such proceeds are impossible to compute, or in the absence of such proceeds, penalties indicated in paragraph 1 hereinabove shall be imposed in amounts of up to 5,000 tax-free minimum citizens' incomes.

Article 22. Penalties imposed on legal persons, associations thereof, and citizens' associations not being legal persons

Acts of unfair competition, as envisaged by this Law, committed by legal persons, associations thereof, and by citizens' associations not being legal persons shall entail penalties imposed by the Antimonopoly Committee of Ukraine and its territorial offices in amounts of up to 2,000 tax-free minimum citizens' incomes.

Article 23. Administrative responsibility of citizens

Acts of unfair competition, as envisaged by this Law, committed by citizens engaged in entrepreneurial activities without forming legal persons, shall result in administrative liability as provided by legislation.

Acts of unfair competition, as envisaged by this Law, committed by citizens in the interest of a third party, these citizens not being engaged in entrepreneurial activities, shall entail administrative penalties in keeping with legally set procedures.

Article 24. Restitution

Damage caused by actions qualified by this Law as unfair competition shall be indemnified as per claims by the interested parties in keeping with procedures established by the civil legislation of Ukraine.

Article 25. Confiscation of unlawfully labelled goods and duplicated goods originating from a different economic entity (entrepreneur)

On establishing unlawful use of others' trademarks, advertizing material, and/or packing, as set forth by article 4 hereinbefore, or on discovering duplicated goods envisaged by article 6 hereinbefore, the interested party may bring the issue before the Antimonopoly Committee of Ukraine or any of its territorial offices, requesting confiscation of unlawfully labelled goods or duplicated goods originally made by a different economic entity (entrepreneur) from both the manufacturer and seller.

Goods thus confiscated shall be disposed of in keeping with procedures determined by the Cabinet of Ministers of Ukraine.

Unlawfully labelled goods or duplicated goods originally made by a different economic entity (entrepreneur) shall be confiscated when there is no other way to prevent mistaken identity damaging that other entity's business.

Article 26. Refutation of untruthful, inaccurate or incomplete data

On discovering that an economic entity (entrepreneur) has been discredited, the Antimonopoly Committee of Ukraine and/or its territorial offices shall have the right to demand official retraction, by the guilty party and that party's own cost, of such untruthful, inaccurate or incomplete information, within a term and in a manner determined by law or by a decision passed in this case.

Chapter VI

Legal Principles of Protection Against Unfair Competition

Article 27. Procedural principles of handling unfair competition cases by the Antimonopoly Committee of Ukraine and its territorial offices

Unfair competition cases shall be dealt with by the Antimonopoly Committee of Ukraine and its territorial offices in keeping with procedures established by this Law, the Law of Ukraine "On Limitation of Monopolism and Banning of Unfair Competition in Entrepreneurial Activities", the Law of Ukraine "On the Antimonopoly Committee of Ukraine", and other legislative acts of Ukraine.

Article 28. Term of statement of claim

Persons whose rights are upset by actions defined by this Law as unfair competition may, within six month from the date on which they discovered or had to discover these transgressions, file statements of claim at the Antimonopoly Committee of Ukraine and/or its territorial offices.

Expiry of the term of statement of claim shall warrant rejection of such statements.

If the Antimonopoly Committee of Ukraine or any of its territorial offices finds that this term was surpassed due to valid reasons, the statement of claim shall be accepted.

Article 29. Means of securing the implementation of decisions made by the Antimonopoly Committee of Ukraine and its territorial offices

When handling a case as per statement of claim, the Antimonopoly Committee of Ukraine and its territorial offices shall have the right to take measures to secure the implementation of their rulings if in the absence of such measures their implementation will be difficult or impossible.

In order to secure the implementation of such decisions, the Antimonopoly Committee of Ukraine and its territorial offices shall issue directives:

- forbidding a person (respondent) to perform certain actions if there are signs of transgression in that person's conduct;
- seizing property or sums in the respondent's possession.

Such rulings may be appealed to a court of law or arbitration in keeping with procedures set forth by article 32 hereinafter, within 15 days from the date of receipt of a copy of the ruling.

The respondent, should the case be closed for lack of evidence, may, in keeping with procedures set by the laws of Ukraine, exact from the claimant damage in the amount of losses inflicted on the respondent when securing the implementation of the ruling.

Article 30. Decisions made by the Antimonopoly Committee of Ukraine and its territorial offices

The Antimonopoly Committee of Ukraine and its territorial offices, when handling unfair competition cases, shall make decisions to be complied with under all conditions, namely on:

- recognizing the fact of unfair competition;
- terminating unfair competition;
- ordering official retraction of untruthful, inaccurate information, to be made by the guilty party at its own cost;
- imposing penalties;
- confiscating unlawfully labelled goods or duplicated goods originally made by a different economic entity (entrepreneur);
- annulling or overriding unlawful acts and abrogating contracts and made by central or local bodies of State executive power, and executive bodies of local self-government.

Decisions imposing penalties in amounts surpassing 400 tax-free minimum citizens' incomes shall be the sole prerogative of the Antimonopoly Committee of Ukraine, each to be passed at a sitting thereof.

Decisions on confiscation of unlawfully labelled goods or duplicated goods originally made by different economic entities (entrepreneurs) shall be complied with in keeping with procedures followed when implementing court rulings.

Article 31. Implementation procedures for decisions on penalties

A transgressor on whom a penalty is imposed shall pay it within 30 days from the date of receipt of the ruling on the penalty, unless otherwise instructed by the ruling.

Each day in default shall entail an additional penalty in the amount of one per cent of the sum of the penalty.

If a transgressor refuses to pay a fine, the Antimonopoly Committee or any of its territorial offices shall recover this fine in an indisputable mode.

Penalties collected shall be distributed as follows: 50 per cent shall be transferred to the State budget of Ukraine, 25 per cent to the budget of the Autonomous Republic of the Crimea and to local budgets, and 25 per cent to the State body imposing the penalty, to help create scientific, material, technical, and database on which to develop and protect competition.

Article 32. Contesting decisions of the Antimonopoly Committee of Ukraine and its territorial offices

Decisions made by the Antimonopoly Committee of Ukraine and its territorial offices in regard to cases on unfair competition shall be appealed, within 30 days from the date of receipt of a copy of the court ruling, to the Supreme Court of the Autonomous Republic of the Crimea, as well as to regional courts, the city courts of Kyiv and Sevastopol, the Arbitration Court of the

Autonomous Republic of the Crimea, regional courts of arbitration and those of Kyiv and Sevastopol.

Article 33. Rules of professional ethics

Economic entities (entrepreneurs), assisted by the Chamber of Trade and Industry of Ukraine and other interested organizations, may develop rules of professional ethics to be adhered to in competition in certain entrepreneurial activities, as well as in certain sectors of the economy. The Rules of Professional Ethics in Competition, developed by economic entities (entrepreneurs), shall be agreed with the Antimonopoly Committee of Ukraine.

The Rules of Professional Ethics in Competition may apply when making contracts and drawing up constituent and other documents binding on economic entities (entrepreneurs).

L. Kuchma
President of Ukraine

The city of Kyiv
7 June 1996